

SECOND AMENDED AND RESTATED OPERATIONS AGREEMENT ("LYMMO")

This Second Amended and Restated Operations Agreement (this "Agreement") is made and entered into this _____ day of _____, 2015 by and among the CITY OF ORLANDO, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter the "CITY"), the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF ORLANDO (hereinafter the "CRA"), and the CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY, a body politic and corporate created pursuant to Part II, Chapter 343, Florida Statutes (hereinafter "LYNX").

WITNESSETH

Whereas, the CITY is a municipal corporation; and

Whereas, LYNX is the regional public transportation agency responsible for providing an integrated, efficient and comprehensive public surface transit system in the counties of Orange, Seminole and Osceola, including bus service; and

Whereas, on January 22, 1998, CITY and LYNX entered into an Operations Agreement (LYMMO) (hereinafter referred to as the "Original LYMMO Agreement") which provided for the operation, funding and maintenance of the Original LYMMO system, as hereinafter defined; and

Whereas, the CITY, in conjunction with the CRA, were actively involved in the establishment of the Downtown Orlando Transit Project, also known as LYMMO (and formerly known as OSCAR) (hereinafter referred to as "Original LYMMO"); and

Whereas, the Original LYMMO route is shown in Exhibit "A" attached hereto and made a part hereof by reference (the "Scope of Services"); and

Whereas, the Original LYMMO system is designed and will operate to provide expanded mobility service throughout the downtown Central Business District of the City of Orlando which is located within the area of operation of LYNX and within the CRA; and

Whereas, the CITY has created a Downtown Orlando Transportation Plan to evaluate existing facilities, projects, future demand and identify future transportation enhancements, and which makes specific recommendations based on the analysis of streets, transit, parking, Intelligent Transportation Systems (ITS), traffic signalization, transportation demand management, freight, land use, and the bicycle and pedestrian network; and

Whereas, pursuant to the Downtown Orlando Transportation Plan, the expansion of the Original LYMMO network consisting of the Parramore BRT Project and the Downtown Orlando East/West Circulator New Starts Project (“Expanded LYMMO,” together with the Original LYMMO, “LYMMO”) is a key component of the future multi-modal transportation system to mitigate congestion in Downtown Orlando; and

Whereas, pursuant to the LYMMO North and South Expansion Alternatives Analysis report, the Original LYMMO corridor includes service to the North Quarter as a key component of the future multi-modal transportation system to mitigate congestion in Downtown Orlando; and

Whereas, the Downtown Orlando Transportation Plan has been incorporated into the CRA’s Downtown Orlando Community Redevelopment Area Plan; and

Whereas, the CITY is fully responsible for improvements and maintenance of the LYMMO roadway, traffic operations/signalization, pedestrian facilities and physical infrastructure, and

Whereas, the CITY and LYNX entered into an Interlocal Agreement executed on July 25, 1994 which specifies in detail the financial, preliminary engineering, design, construction, and management responsibilities of each of the parties thereto pertaining to LYMMO (hereinafter referred to as the “Original Interlocal Agreement”); and

Whereas, the CITY, LYNX and the CRA entered into an Amended and Restated Interlocal Agreement, dated August ___, 2011, as amended (hereinafter referred to as the “Amended and Restated Interlocal Agreement”), relating to a Downtown Orlando Transit Circulator Expansion Alternatives Analysis Study and Subsequent Funding for the Expansion Program; the LYNX Orlando Trail Project; and the Creative Village Moving Parramore Forward Project; and the Downtown Orlando East/West Circulator New Starts Project, which amended and restated the Original Interlocal Agreement; and

Whereas, the CITY, CRA and LYNX mutually desire to continue the cooperative relationship whereby LYNX will provide or cause to be provided the operational services associated with LYMMO; and

Whereas, the CITY, CRA and LYNX desire to enter into this Agreement to set forth the terms and conditions of such a continuing cooperative relationship including establishing the duties and responsibilities of each in respect of LYMMO.

Now, therefore, for and in consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to as follows:

1. DESCRIPTION OF THE LYMMO PROJECT – The LYMMO Project consists of the Original LYMMO and the Expanded LYMMO.

The Original LYMMO consists of 4.04 miles of an exclusive and mixed use bus thoroughfare through downtown Orlando between the former Orlando Arena site, the North Quarter district and Orlando City Hall. The Original LYMMO construction project includes roadway improvements, traffic signalization, Compressed Natural Gas (referred to as “CNG”) vehicle procurement, CNG facility expansion, streetscape and customer amenities. The Original LYMMO route, as depicted in Figure 2.1 of the Scope of Services comprises a one-way, single-lane loop in the former Centroplex area (along Alexander Place, Hughey Avenue, Garland Avenue, and Amelia Street), two-lanes along Livingston Street and Magnolia Avenue (between Interstate 4 and Church Street), a one-way, single-lane loop at the south end of downtown (along Magnolia Avenue, South Street, Orange Avenue, and Church Street), and an additional one-way northern loop serving the North Quarter district corridor bounded by Magnolia and Orange Avenues on the east and west, and from Livingston Street north to Marks Street. Starting at the Centroplex I Garage, buses operate east on Alexander Place, south on Hughey Avenue, east on Livingston Street, north on Magnolia Avenue, west on Marks Street, south on Orange Avenue, east on Livingston Street, south on Magnolia Avenue, and west on South Street. Returning buses turn north on Orange Avenue in an exclusive contra-flow bus lane, east on Church Street, north on Magnolia Avenue, west on Livingston Street, north on Garland Street, and west on Amelia Street. Hybrid electric, low floor, rubber tired buses currently operate along the route.

The Expanded LYMMO consists of the Parramore BRT Project and the Downtown Orlando East/West Circulator New Starts Project. The Parramore BRT Project consists of a bus rapid transit extension of the Original LYMMO system to serve the Parramore community west of I-4 and the Creative Village future development. See Figure 2.2 of the Scope of Services. The Downtown Orlando East/West Circulator New Starts Project consists of a bus rapid transit extension of the Original LYMMO system to serve the downtown area east and west of I-4 along a corridor bounded by Westmoreland Dr. on the west, Summerlin Ave. on the east, Central Blvd. on the north and Church and South St. on the south. See Figure 2.3 of the Scope of Services. The New Starts Project will serve the Parramore and Thornton Park neighborhoods as well as the downtown SunRail station, the Amway Center and the Dr. Phillips Center for the Performing Arts. Additionally, the project also utilizes FTA New Starts Funding, which was used to purchase four (4) hybrid electric buses.

2. **OPERATIONS STEERING COMMITTEE** – The parties acknowledge that an Operations Steering Committee (hereinafter referred to as “OSC”) has been established and will continue to provide oversight and guidance to CITY, CRA and LYNX relative to ongoing operational issues of the Original LYMMO system and will assume such oversight and guidance responsibilities with respect to the Expanded LYMMO system as well, especially during the startup period. Operational issues shall include, though not exclusively, advertising, marketing, hourly rate, customer information systems, routing, fares, maintenance and

scheduling/headways related to the LYMMO system. The OSC will consist of three members, with one member each from LYNX, the CITY and the CRA. The OSC will meet at least once every three (3) months or more frequently, if deemed necessary by the OSC, throughout the term of this Agreement.

3. EQUIPMENT AND FACILITIES.

a. LYMMO BUSES –

(1). LYNX hereby agrees to use transit vehicles purchased specifically for LYMMO and further agrees to provide any bus or other public transit vehicle owned and operated by LYNX, or owned and operated by some other public or private person or entity and operated by them on behalf of LYNX, as part of LYMMO. LYNX will provide maintenance on the vehicles through its current maintenance facilities. As contemplated by the parties and the Amended and Restated Interlocal Agreement, LYNX has procured transit buses which have been built to specifications unique to LYMMO (such buses being hereinafter referred to as “LYMMO BUSES”).

(2). LYNX shall be responsible for maintaining, as part of its current Capital Improvement Program, a capital replacement schedule for LYMMO BUSES which shall describe the year of vehicle replacement and funding source. Vehicle replacement shall be treated in the same fashion as any other vehicle under LYNX’s Regional Fleet Replacement Program which is contingent upon eligible funding from a federal, state, or local grant. Minimum replacement criteria under LYNX’s current Regional Fleet Replacement Program is vehicle age of twelve (12) years or Five Hundred Thousand (500,000) operational vehicle miles. The CITY will cooperate and assist with obtaining a local funding match that may be required under a federal or state grant. In the event that eligible funding is unavailable through a federal, state or local grant for vehicle replacement, then the CITY will assist in obtaining funding of such replacement.

Notwithstanding the above, the CITY shall have the option for early vehicle replacement at its own cost prior to the above minimum replacement criteria or modification of the vehicles subject to the availability of total funding by the CITY for such vehicle replacement or vehicle modification.

(3). Procurement for any replacement of LYMMO BUSES shall be conducted by LYNX in cooperation with the CITY in accordance with LYNX’s standard procurement policies and procedures.

- b. Upgrade of Current Facilities. LYNX hereby agrees to upgrade current facilities as necessary to service and operate the LYMMO BUSES. LYNX will provide maintenance for any such upgraded facilities.
- c. Passenger Amenities. For purposes of this Agreement and in accordance with the Customer Amenities Manual published by LYNX, “Passenger Amenities” means any passenger shelter, transit sign, specialty paving, system map/fare information, transit vehicle waiting benches (i.e. bus benches), leaning rail, trash receptacle, newspaper stand, landscaping, public telephone, courtesy telephone, lighting, bicycle storage, bus bay, reader board, computer bulletin, drinking fountain, landscaping, streetscape and any other item provided that may be for the use, comfort and convenience of customers using the LYMMO services. LYNX shall be responsible for the acquisition and installation of all Passenger Amenities associated with LYMMO including the costs thereof. Ownership and title to the passenger shelter shall reside with LYNX.
 - (1). The CITY and the CRA will be jointly and severally responsible for the daily maintenance which includes cleaning and sweeping of the Passenger Amenities. Additionally, the CITY and the CRA shall be jointly and severally responsible for light maintenance of the Passenger Amenities which shall be defined as graffiti removal, spot and touchup painting, and landscape maintenance on a daily or as needed basis.
 - (2). LYNX shall be responsible for the heavy maintenance of the Passenger Amenities which shall be defined as parts replenishment, replacement or repair of the Passenger Amenities whichever is necessary. Additionally, LYNX shall be responsible for heavy, overall painting of the Passenger Amenities.
- d. Customer Information Systems. LYNX shall be responsible for the construction, installation and costs associated with Customer Information Systems which shall include, though not exclusively, live surveillance technology and information kiosks which may be located at each passenger shelter and transponders located on the LYMMO BUSES. LYNX shall be responsible for the administration, operation and maintenance of all Customer Information Systems except that LYNX shall be responsible for on-going maintenance, repair and replacement of the transponders. Content of the Customer Information Systems shall be reviewed and approved by the OSC.
- e. In-Ground Hydraulic Bus Lifts. LYNX hereby agrees to modify its

Current In-ground Hydraulic Bus Lifts located at the LYNX Operations and Maintenance base to accommodate the customary and reasonably necessary maintenance of the LYMMO BUSES. Such modifications are necessary due to the low-flooring of the bus. LYNX has procured under a separate contract the necessary modifications to the current In-Ground Hydraulic Bus Lifts.

4. LYMMO SERVICE.

- a. LYNX hereby agrees to provide or cause to be provided by other qualified public transit providers on behalf of LYNX, subject to the approval of the CITY, public transit service through the operation of the LYMMO BUSES in the LYMMO service area in accordance with the Scope of Services which describes the operation, service standards, maintenance and safety of LYMMO by LYNX.
- b. The parties shall mutually agree on the commencement date for the start-up, training and operation of the Expanded LYMMO service.
- c. The CITY, CRA and LYNX may from time to time mutually agree on changes, revisions or amendments to the Scope of Services including the effective date and any appropriate equitable adjustment, if any, to the payments to be made by the CITY or CRA to LYNX as provided in Paragraph 5 below, occasioned by such change, revision or amendment to the Scope of Services.
- d. If such change, revision or amendment to the Scope of Services has the effect of changing the level(s) of service or transfers between LYMMO and other LYNX routes, it shall be approved by LYNX, the CRA, and the CITY before going into effect. The foregoing notwithstanding, LYNX may unilaterally make any changes to the LYMMO service if such changes, in the aggregate, would not result in a greater than 2% increase or decrease in service and service costs in the LYMMO service area (as computed on an annual basis) (the “2% Threshold”). If LYNX desires to make changes to the LYMMO service and such changes would in the aggregate exceed the 2% Threshold it will first seek approval from the CITY and the CRA, which approval shall not be unreasonably withheld or delayed. LYNX may not unilaterally increase service and service costs under this subparagraph by five percent (5%) in any five (5) year period. Any party may propose changes to the Scope of Services by providing at least ninety (90) days written notice to the other party by mail or personal delivery and, if require by law, to the public. However, the parties agree that a two (2) week notification period shall be sufficient for the scheduling of service associated with special events.

5. CITY and CRA FINANCIAL SUPPORT.

a. Service Costs.

(1.) Original LYMMO Service. In consideration of LYNX operating the Original LYMMO as contemplated by this Agreement, the CITY and the CRA will reimburse LYNX in an amount each month equal to the total operating cost to provide such service. The total operating cost for such service shall be equal to (i) the total number of actual hours of service provided for the Original LYMMO for the month, multiplied by (ii) LYNX's hourly cost (as set forth Exhibit "B" attached hereto and incorporated herein (the "Statement of Costs")), plus (iii) other direct costs not included in LYNX's hourly operating costs such as capital, marketing, and special event costs which the CRA and CITY have agreed to in advance of such expenditure being made. As between the CITY and the CRA, allocation of the funding for the Original LYMMO will occur as follows: CITY shall contribute funds from Centroplex Garages Fund 4130_F and Downtown Transit Fund 4131_F, if any, and CRA shall contribute the remainder of the total operating costs.

(2.) Expanded LYMMO Service. In consideration of LYNX operating the Expanded LYMMO as contemplated by this Agreement, the CITY will reimburse LYNX in an amount each month equal to the total operating cost to provide such service. The total operating cost for such service shall be equal to (i) the total number of actual hours of service provided for the Parramore BRT Project and the Downtown Orlando East/West Circulator New Starts Project for the month, multiplied by (ii) LYNX's hourly cost (as set forth in the Schedule of Costs), plus (iii) other direct costs not included in LYNX's hourly operating costs such as capital, marketing, and special event costs which the CRA and CITY have agreed to in advance of such expenditure being made. Subject to the terms of Paragraph 5(e) below, the parties may enter into an amendment to this Agreement to transfer the CITY's obligation, or any portion thereof, to the CRA. The parties agree that any revenues generated by LYMMO through displays of artwork and advertising shall be collected by LYNX and remitted to the CITY, and the CITY and the CRA agree as between themselves that such revenue shall be allocated between the CITY and CRA as set forth in subparagraph 7(b)(3) below. Such funds shall be used to pay for the cost of LYMMO service or such other transit costs as the CITY and LYNX may agree from time to time. When depicted as a formula, the monthly payment will be as follows:

$(\text{Actual Total Operating Hours} \times \text{Hourly Cost}) + \text{Other Direct Costs (if any)} = \text{Monthly Payment}$

- b. Within fifteen (15) days after the end of each calendar month during the term, in which LYNX operates LYMMO, LYNX shall calculate the monthly payment for the preceding month as well as the number of passengers carried on the LYMMO BUSES. In addition, LYNX shall provide a schedule to the CITY for each LYMMO BUS detailing the hours and miles operated for LYMMO or other service, as approved by the CITY and CRA. LYNX shall report that information to the CITY together with a statement or invoice in the amount of the payment to be made by the CITY or CRA to LYNX. The CITY and CRA will review the information and the invoice and pay LYNX the amount of the invoice within thirty (30) days after its receipt.
- c. In addition to the payments described in subparagraph 5(a) above, the CITY and CRA shall also pay or reimburse LYNX for certain other additional costs not included in the base service payments described in subparagraph 5(a) and caused by any changes to the LYMMO service as may be mutually agreed between the CITY, CRA and LYNX that result in increased or additional costs to LYNX. Such costs will be agreed upon by LYNX, the CRA and the CITY before being incurred, and the CITY and CRA agree to make payment to LYNX within thirty (30) days after receipt of an invoice from LYNX for such costs.
- d. At least 60 days prior to the end of each half-fiscal year (with each fiscal year ending September 30), the parties shall mutually agree to any adjustment to LYNX's costs of operation for the next half-fiscal year. LYNX shall provide the CITY and CRA on a semi-annual basis no later than ninety (90) days prior to the end of each half-fiscal year, with a detailed schedule identifying all costs of operations and an audited financial statement for the previous half-fiscal year. If the parties fail to timely reach an agreement regarding any adjustments to such costs of operation, then the parties shall proceed pursuant to the second and third sentences of subparagraph 6(b) as if the next half-fiscal year were a Renewal Term (as defined below).
- e. CITY and CRA acknowledge that the CITY has identified funding to satisfy its obligations under subparagraphs 5(a) and 5(b) above through the end of fiscal year 2021 (September 30, 2021). The CITY and CRA therefore agree to negotiate timely and in good faith to resolve the issue of funding the operating costs of Expanded LYMMO after October 1, 2021, which resolution may include CRA's financial participation.

6. TERM.

- a. The term of this Agreement shall commence on the date this Agreement is filed in accordance with Paragraph 19 below and continue for a period of three (3) years. The term of this Agreement shall be automatically extended for successive one (1) year periods (each such period, a “Renewal Term”) without need for any notices or additional action being taken by any party hereto; provided, however, that the term will not be extended for a Renewal Term if any party notifies the others in writing that it does not desire to extend the term beyond its then scheduled expiration date at least ninety (90) days prior to the expiration of the then current term.
- b. In the event that any party wishes to extend the LYMMO service for an additional term but desires to modify the fare(s), route, or the levels of service during such term, or change the monthly costs payable to LYNX, it must provide written notice to that effect to each other party at least 180 days prior to the expiration of the then current term and the parties must reach an agreement on the proposed modification not later than 90 days prior to the commencement of the Renewal Term. If prior to the termination date of this Agreement or any Renewal Term the parties fail to reach a written agreement setting forth the fare(s), route, levels of service or monthly costs payable to LYNX for the next Renewal Term, then the CITY and the CRA will continue to pay LYNX the monthly installment amounts due under Section 5 above, (the “Post-Termination Payment”) and LYNX will continue to pay the City and CRA any applicable advertising revenue under this Agreement and furnish services, in each case, at the levels then in effect until the earliest to occur of the following: (i) LYNX, the CITY and the CRA reach a written agreement setting forth the fare(s), route, levels of service and monthly costs payable to LYNX for the next Renewal Term; (ii) ninety (90) days following that date that the CITY or the CRA, through action taken by its governing board, notifies LYNX in writing that it wishes to terminate this Agreement and no longer receive from LYNX the LYMMO services provided herein; or (iii) the date that LYNX actually discontinues the LYMMO services as provided below. If the parties fail to reach an agreement under this subparagraph setting forth the fare(s), route, levels of service and monthly costs payable to LYNX for the next Renewal Term within ninety (90) days after the start of the Renewal Term, then LYNX may, within its discretion, reduce, eliminate or discontinue the provision of LYMMO services immediately upon providing the CITY and the CRA with written notice of same.
- c. If, as a result of subparagraph 6(b), the CITY and the CRA make any payments to LYNX for a Renewal Term, then, in that event, the parties will reconcile the difference between the amount that was paid and the

amount that has been agreed to be appropriated for the Renewal Term in the first month following the execution of the written agreement setting forth the fare(s), route, levels of service and monthly costs payable to LYNX for such Renewal Term.

7. LYMMO DESIGN AND GRAPHICS

a. LYMMO GRAPHICS

(1.)LYNX has designed graphics for the LYMMO Visual Image Program (such existing graphics and new graphics for LYMMO, “LYMMO Graphics”). The CITY and CRA shall have the right to approve any new LYMMO graphics. Any new LYMMO Graphics must be unique enough to distinguish LYMMO from Regular LYNX service. However, the parties agree that the LYMMO graphics shall coordinate with the LYNX Visual Image Program.

(2.)LYNX shall establish an annual marketing program for the LYMMO service using the LYMMO Graphics (the “LYMMO Visual Image Program”). The LYMMO Visual Image Program shall be subject to approval by the CITY and CRA. The LYMMO Graphics shall be used on all passenger amenities on the LYMMO route as described in subparagraph 7(a)(1.) above.

(3.)The parties acknowledge that LYNX is the creator of the design for the LYMMO Graphics (including the trademark “LYMMO”) and possesses all intellectual property rights in and to the LYMMO Graphics and all associated goodwill. Therefore the CITY and the CRA agree that LYNX shall retain such intellectual property rights and all intellectual property rights and associated goodwill to any new LYMMO Graphics. LYNX hereby grants a nonexclusive license to the CITY to use the trademark “LYMMO” and the LYMMO Graphics.

(4.)LYNX shall be responsible for preparing the marketing materials to be used for the LYMMO Visual Image Program subject to the approval of the OSC.

(5.)The CITY shall reimburse LYNX for all reasonable costs actually incurred by LYNX for the marketing and advertising activities referenced in subparagraph 7(a)(4.) above. The CITY’s above reimbursement obligations are contingent on LYNX obtaining the CITY’s prior approval of marketing and advertising strategies related to the applicable costs.

b. BUS EXTERIOR DESIGN AND FINISH.

(1.)LYNX shall design and finish the LYMMO BUSES in a manner which implements the LYMMO Visual Image Program and utilizes the LYMMO Graphics.

(2.)Subject to the CITY or CRA's prior approval of the design, preparation and finish specifications, the CITY or CRA shall reimburse LYNX for all costs associated with the bus exterior design, preparation and finish which are not compensated for in subparagraph 7(b)(3.) below.

(3.)The parties may anytime during the term of this Agreement mutually agree that LYNX may enter into separate contracts with companies, firms or persons for the use of the exterior of the LYMMO BUSES for advertising purposes in accordance with the rules and policies for such advertising established by LYNX, with such rules and policies for such LYMMO BUSES subject to the approval of the CITY. All revenues derived from such advertising shall be remitted to the CITY and allocated as described in subparagraph 7(b)(3), above. The CITY and CRA agree that the remitted funds will be allocated between the CITY and CRA based on the ratio of the operating cost of the Original LYMMO to the operating cost of the Expanded LYMMO. The allocation for each system shall be disbursed to the entity funding the operation of that system. For example, if the CRA funds the operating cost of the Original LYMMO then the CRA will be entitled to the above-described revenue allocation for the Original LYMMO.

c. BUS INTERIOR ADVERTISING.

The parties agree that LYNX may enter into separate contracts with companies, firms, or persons for the use of the interior of the LYMMO BUSES for advertising purposes in accordance with the rules and policies for such advertising established by LYNX and approved by the CITY. All revenues derived from such advertising shall be remitted to the CITY and allocated as described in subparagraph 7(b)(3), above.

d. CUSTOMER INFORMATION KIOSKS.

The parties agree that LYNX may enter into separate contracts with companies, firms, or persons for the use of Customer Information Kiosks for advertising purposes in accordance with the rules and policies for such advertising established by LYNX and subject to approval of the CITY and CRA. All revenues derived from such

advertising shall be remitted to the CITY and CRA and allocated as described in subparagraph 7(b)(3.), above.

8. **SIGNALIZATION/TRAFFIC CONTROL.** LYNX shall, at its sole cost, be responsible for the procurement and installation of all signalization and traffic control associated with the LYMMO system. The CITY shall, at its cost, be responsible for the operation and maintenance of all signalization and traffic control associated with the LYMMO system.
9. **STREETSCAPE.** LYNX shall, at its sole cost, initiate, continue and support required construction, landscaping and installation of all streetscape improvements associated with the LYMMO stations and stops. The streetscape shall not interfere with safe and timely operation of the LYMMO system service.
10. **OFFICE SPACE.** The CITY shall continue to provide a supervisory booth to LYNX for its personnel as is currently being provided in the Centroplex I Garage at no cost to LYNX, which shall include access to the Customer Information Systems reference in subparagraph 3(d) above allowing LYNX personnel to monitor the LYMMO service and administration of computerized messages and data. If necessary for any reason, the CITY reserves the right to relocate the supervisory booth to a location that is convenient for operation of LYMMO and which has amenities that are similar to the Centroplex I Garage site.
11. **INSURANCE.**
 - a. LYNX represents and warrants that it currently has and will maintain a risk management program, including a self-insurance program for LYNX's operations and that the cost of such risk management program and self-insurance is included in LYNX's monthly cost of service specified in the Schedule of Costs. Before commencing operations as contemplated by this Agreement, LYNX shall mail to the CITY Certificates of Insurance for the LYMMO BUSES satisfactory to the CITY from each insurance company evidencing that such insurance is in force. The Certificates shall state the policy number, dates of expiration and limits of liability thereunder.
 - b. The CITY represents and warrants to LYNX that it currently has and will maintain a risk management program, including a self-insurance program. Before commencing operations as contemplated by this Agreement, the CITY shall mail to LYNX Certificates of Insurance satisfactory to LYNX from each insurance company evidencing that such insurance is in force. The Certificates shall state the policy number, dates of expiration and limits of liability thereunder.

12. NO WAIVER OF SOVEREIGN IMMUNITY. The Parties are aware and understand that each other party is entitled to the benefit of sovereign immunity under the laws of the State of Florida. Nothing contained in this Agreement or in the relationship between the parties hereunder shall in any way whatsoever constitute any waiver by any party of its rights to invoke sovereign immunity as a governmental entity.
13. INDEMNIFICATION BY THIRD PARTIES. On and after the effective date of this Agreement, the LYNX shall require all third party vendors providing any goods or services related to the LYMMO system to defend, indemnify, and hold harmless the CITY, CRA and the LYNX, and each of their respective officers, directors, agents, and employees, whether elected, appointed, or otherwise (collectively referred to as the “Indemnitees” and individually as the “Indemnatee”) from and against any and all liabilities, losses, damages, costs, expenses, claims, obligations, penalties, and causes of action (including without limitation, reasonable fees and expenses for attorneys, paralegals, expert witnesses, and other consultants, at their respective prevailing market rates for such services) (collectively, “Damages”) whether based upon negligence, strict liability, absolute liability, product liability, misrepresentation, contract, implied or express warranty, or any other principle or theory of law or equity, that are imposed upon, incurred by, or asserted against an Indemnatee or the Indemnitees or which an Indemnatee or the Indemnitees may suffer or be required to pay and which arise out of or relate in any manner from the respective third party’s performance of any work (or failure to perform any obligation or duty associated with such work) associated with LYMMO, and which is caused in whole or in part by the respective third party, or any of its agents, employees, officers, directors, contractors, subcontractors, affiliates, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable. Except as otherwise provided in this Agreement, nothing contained in this section shall constitute or be construed to mean or result in any indemnification of any matter by the CITY or LYNX to any other party, nor shall it constitute a waiver by the CITY or LYNX of its grants and privileges under the principles of sovereign immunity, including the limitations on liability contained therein. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing a claim otherwise barred by sovereign immunity or other operation of law.
14. THIRD PARTY INSURANCE. On and after the effective date of this Agreement, LYNX shall require all third party vendors providing any goods or services related to the LYMMO system to provide and maintain insurance in accordance with the insurance coverage standards of the CITY, CRA and LYNX for such third party goods and services providers. The respective policy or policies must name the CITY, CRA and LYNX as an additional insured. Nothing contained herein shall require the CITY, CRA or LYNX to itself obtain any insurance. Nothing in this Agreement, including the requirement to list the CITY and LYNX as “additional insureds” on any insurance policy shall constitute a

waiver by the CITY, LYNX or the CRA of its grants and privileges under the principles of sovereign immunity, including the limitations of liability contained therein.

15. NO PERSONAL LIABILITY. No provision of this Agreement is intended, nor shall any be construed, as a covenant, promise, or obligation of any official, officer, director, agent, or employee, whether elected, appointed, or otherwise, of the CITY, CRA or LYNX in their respective individual or private capacity and neither shall any such persons or entities be subject to personal or private liability by reason of any covenant, promise, or obligation of the CITY, CRA or LYNX hereunder.
16. NO JOINT VENTURE OR AGENCY. Nothing contained in this Agreement or any other document executed in connection herewith is intended or shall be construed to establish the CITY or CRA as a joint adventurer or partner, team member, contractor, agent or assign of LYNX. The CITY and CRA represent and warrant that they cannot create any obligation or responsibility on behalf of LYNX, nor bind LYNX in any manner. LYNX represents and warrants that it cannot create any obligation or responsibility on behalf of the CITY or CRA, nor bind the CITY or CRA in any manner. Each party hereto is acting on its own behalf, and has made its own independent decision to enter into this Agreement, and have likewise determined that the same is appropriate, proper, and in its own self-interest based upon its own judgment and the advice from such advisers as it may deem necessary and proper. Additionally, the CITY, CRA and LYNX, along with their respective agents, contractors, and subcontractors, shall perform all activities that are required and anticipated by this Agreement as separate and independent entities and not as agents of the other party hereto.
17. MISCELLANEOUS. This Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes and replaces all prior discussions, understandings and agreements between the parties relating to such matters provided, however, that this Agreement shall not replace nor supersede the Amended and Restated Interlocal Agreement and Trademark License Agreement, which shall remain in full force and effect between the parties. The above-referenced agreements shall be construed and interpreted together as if in one document, but in the event of any conflict or inconsistency between them, the terms of this Agreement shall control. For the avoidance of doubt, this Agreement amends and restates the Original LYMMO Agreement in its entirety.
18. CONTROLLING LAWS.
 - a. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the CITY now in effect and those hereinafter are adopted.

- b. The location for the settlement of any and all claims, controversies, or disputes arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange County, Florida.
- c. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the actions contemplated by this Agreement.

19. **BINDING NATURE OF AGREEMENT.** This Agreement shall be binding only among the CITY, the CRA and LYNX, and inure to the benefit of successors or assigns of the parties. Any assignment of any party's duties or responsibilities under this Agreement, in whole or in part, is subject to the prior approval of the other party.

20. **NOTICES.** All notices, consents, approvals, waivers and deletions which a party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficient only when mailed, first-class postage affixed, addressed as follows:

CITY: City of Orlando
400 South Orange Avenue
Orlando, FL 32801
Attn: Director of Economic Development

With a copy to:

City of Orlando
City Attorney's Office
400 South Orange Avenue
Orlando, FL 32801

CRA: Community Redevelopment Agency of the City of Orlando
400 South Orange Avenue
Orlando, FL 32801
Attn: Executive Director

LYNX: Central Florida Regional Transportation Authority
455 N. Garland Ave.
Orlando, FL 32801
Attn: Executive Director

21. **AUDIT AND RECORD KEEPING PROCEDURES.** LYNX shall keep and maintain accurate records of all costs associated with the performance of this Agreement and shall keep such records open for the inspection or audit by the CITY or CRA at reasonable hours during the entire term of this Agreement, plus

three (3) years after the expiration or termination of this Agreement or such other term as may be specified by the Federal Transit Administration or the Florida Department of Transportation. If any litigation, claim or audit is commenced prior to the expiration of the term of this Agreement and extends beyond such term, the records shall be maintained until all litigation, including appeals, claims or audits have been concluded or resolved. Any person authorized by the CITY or CRA shall have access to and the right to examine any of LYNX's records associated with LYMMO.

22. **FILING OF AGREEMENT.** This Agreement shall be filed by LYNX with the Clerk of the Circuit Court of Orange County, Florida, in accordance with Section 163.01 (11), Florida Statutes. This Agreement is intended by the parties hereto and shall be considered to be an Interlocal agreement such as that described in Section 163.01 (11), Florida Statutes.

[Signatures appear on following pages]

IN WITNESS WHEREOF, the parties hereunto executed this Agreement as of the day and year first written above.

CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY

By:_____

Name:_____

Title:_____

ATTEST:

By:_____

Approved as to Form:

This Contract is approved as to form only
for execution by LYNX and this approval
is not to be relied upon by the Contractor
for any purpose.

AKERMAN LLP

By:_____

Name:_____

Title: LYNX General Counsel

ATTEST:

CITY OF ORLANDO

City Clerk

By:_____
Mayor / Pro Tem

APPROVED AS TO FORM AND
LEGALITY

For use and reliance by the City of
Orlando, Florida only.

By:_____
Chief Assistant City Attorney,
Orlando, Florida

COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF ORLANDO,
FLORIDA

By:_____
Buddy Dyer, as its Chairman

ATTEST:

By:_____
Thomas Chatmon, as its
Executive Director