

SERVICE FUNDING AGREEMENT

**by and between
CITY OF ORLANDO, FLORIDA
and
LYNX**

THIS SERVICE FUNDING AGREEMENT (“**Agreement**”) is made and entered into as of October 1, 2014, by and between the City of Orlando, Florida, a charter city and political subdivision of the State of Florida, whose principal address is 400 South Orange Avenue, Orlando, Florida 32802 (hereinafter the “**Funding Partner**”), and the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate created pursuant to Part II, Chapter 343, Florida Statutes, whose principal address is 455 North Garland Avenue, Orlando, Florida 32801 (hereinafter “**LYNX**”).

WITNESSETH

WHEREAS, Part II, Chapter 163, Florida Statutes (the “**Local Government Comprehensive Planning and Land Development Regulation Act**”), provides, *inter alia*, that specific public facilities and services must be available concurrently with the impacts of development; and

WHEREAS, the Funding Partner recognizes the need to provide Public Transportation (as hereinafter defined) in an efficient manner and acknowledges the benefits of increased ridership on the regional transportation system; and

WHEREAS, increasing traffic congestion and continued population growth require mass transit service improvements; and

WHEREAS, reliable and convenient mass transit service offers a viable alternative to private automobile travel; and

WHEREAS, the Funding Partner recognizes the need to maintain and improve transit services; and

WHEREAS, pursuant to Section 343.64, Florida Statutes, LYNX has the authority to own, operate, maintain, and manage a Public Transportation system in the area of Orange, Seminole and Osceola Counties; and

WHEREAS, LYNX currently provides mass transit services within the geographical limits of the Funding Partner; and

WHEREAS, pursuant to Section 343.64, Florida Statutes, LYNX has the right to contract with other governmental entities, including the Funding Partner, and has the right to accept funds from such other governmental entities; and

WHEREAS, the Funding Partner and LYNX entered into a an Interlocal Agreement for Public Transit Services dated as of October 8, 2013 (the “**Prior Fiscal Year Funding**”

Agreement”) pursuant to which the Funding Partner agreed to appropriate funds to LYNX for fiscal year 2014 (October 1, 2013 - September 30, 2014) to support LYNX Public Transportation services within the Service Area (as hereinafter defined); and

WHEREAS, the term of the Prior Fiscal Year Funding Agreement ended on September 30, 2013; and

WHEREAS, the Funding Partner has budgeted funds for the fiscal year beginning on October 1, 2014 and ending on September 30, 2015 (“**Fiscal Year**”) to support LYNX’s Public Transportation services for such fiscal year; and

WHEREAS, at present, LYNX and the Funding Partner acknowledge that the funds provided by the Funding Partner to LYNX are used as the Funding Partner’s support of the regional Public Transportation System within the Service Area only.

NOW, THEREFORE, in and for consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the Funding Partner and LYNX agree as follows:

1. **Recitals.** The Funding Partner and LYNX hereby declare that the Recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement.

2. **Definitions.** The following capitalized terms shall have the following meanings:

“**Access LYNX**” means LYNX’s van transit service for medically-qualified, physically challenged transit customers.

“**ADA**” means the Americans with Disabilities Act of 1990.

“**Agreement**” means this Service Funding Agreement and its Exhibits.

“**Deadhead Hours**” means the vehicle hours of operation incurred in non-Revenue Service in support of Revenue Service (i.e., hours from the garage to the beginning of a route).

“**Deadhead Miles**” means the vehicle miles incurred in non-Revenue Service in support of Revenue Service (i.e., miles from the garage to the beginning of a route).

“**Fiscal Year**” means the twelve (12) month period commencing October 1, 2014 and ending the following September 30, 2015.

“**Fixed-Route Service**” means service provided on a repetitive, fixed-schedule basis along a specific route with vehicles stopping to pick up and deliver passengers to specific locations. Unlike demand response service, Fixed-Route Service services the same origins and destinations. Fixed-Route Service includes route deviation service, where revenue vehicles deviate from fixed-routes on a discretionary basis.

“**LYMMO**” means the Downtown Orlando bus rapid transit circulator operating under the name of LYMMO.

“**Operating Expenses**” mean the expenses associated with the operations of LYNX, and which are classified by function or activity.

“**Passenger Fares**” means the revenue earned from carrying passengers in regularly scheduled service. Passenger Fares include the base fare, distance premiums, express service premiums, transfers and quantity purchased discount fares (i.e., daily, seven-day, thirty-day, student, senior, etc. tickets and passes).

“**Passenger Trips**” means the number of fare-paying individuals who ride LYNX’s buses in any given period with each individual being counted once per boarding.

“**Public Transportation**” means transportation by a conveyance (e.g., by bus or van) that provides regular and continuing general or special transportation to the public, but does not include light rail. “Special transportation” includes transportation services being provided to the public pursuant to the ADA.

“**Revenue Hours**” means the hours a vehicle travels while in Revenue Service, which excludes Deadhead Hours.

“**Revenue Miles**” means the miles a vehicle travels while in Revenue Service, which excludes Deadhead Miles.

“**Revenue Service**” means the portion of the trip and/or period of time when a vehicle is available to board and alight fare-paying transit passengers.

“**Service Area**” means generally the geographic area or the Fixed-Route Service, as the case may be, described and set forth in **Exhibit “A”**, attached hereto.

3. **Funding Partner Obligations.**

(a) The Funding Partner agrees to appropriate the amount specified on **Exhibit "A"** (the “**Appropriated Amount**”) to LYNX for the Fiscal Year for the provision of Public Transportation within the Service Area.

(b) The Appropriated Amount shall be paid by the Funding Partner to LYNX in four (4) equal quarterly installments, with each installment being due on the first day of each quarter. The first installment payment shall be due upon the later of (x) October 1, 2014 or (y) the execution date of this Agreement.

(c) If, prior to the termination date of this Agreement (as set forth in Section 19 below), the Funding Partner and LYNX fail to reach a written agreement setting forth an appropriation to LYNX for the next Fiscal Year, then, notwithstanding the termination of this Agreement, the Funding Partner shall continue to pay LYNX the monthly installment amounts due pursuant to Section 3(b) (the “**Post-Termination Payment**”) on the first day of each month

until the earliest to occur of the following: (i) LYNX and the Funding Partner reach a written agreement setting forth an appropriation for the next Fiscal Year; (ii) ninety (90) days following that date that the Funding Partner, 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 Public Transportation services provided herein; or (iii) the date that LYNX actually discontinues the Public Transportation services to the Funding Partner. If so elected by LYNX, the Post-Termination Payment shall be adjusted to reflect the increase or decrease, as the case may be, in the hourly rate that the LYNX governing board approves for the next Fiscal Year, at such time as the LYNX governing board approves such new hourly rate. If LYNX and the Funding Partner fail to reach an agreement setting forth an appropriation for the next Fiscal Year by December 31, 2013, then LYNX may, within its discretion, reduce, eliminate or discontinue the provision of Public Transportation services to the Funding Partner immediately upon providing the Funding Partner with written notice of same.

(d) If, as a result of Section 3(c), the Funding Partner makes any payments to LYNX for the next Fiscal Year, 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 next Fiscal Year in the first month following the execution of the written agreement setting forth an appropriation for the next Fiscal Year.

(e) Notwithstanding anything to the contrary set forth herein, the payment of all amounts due to LYNX hereunder shall be made in compliance with the Florida Prompt Payment Act, codified at Sections 218.70 to 218.80, Florida Statutes.

4. **LYNX Obligations.**

(a) **Service.** LYNX agrees to provide Public Transportation within the Service Area during the Fiscal Year. LYNX shall request written approval from the Funding Partner prior to implementing any of the following changes which may result in a greater than 2% increase or decrease of Fixed-Route Service hours within the Service Area (as computed on an annual basis), which written approval shall not be unreasonably withheld or delayed:

- (i) Addition of route(s)
- (ii) Elimination of route(s)
- (iii) Combination of routes
- (iv) Changes to service span
- (v) Change to service frequency
- (vi) Changes in days of operation

(b) **Quarterly Reporting.** For the purposes of operations and management analysis, LYNX agrees to provide the Funding Partner quarterly written performance reports reflecting the LYNX operations of the prior quarter. The quarterly reporting periods shall end on

December 31, March 31, June 30 and September 30 and said reports shall be submitted to the Funding Partner's Office of Management and Budget and Growth Management Departments within forty-five (45) days after the end of each quarter. Each quarterly report will include the following items:

- (i) Maps and schedules for each route operating in the Service Area.
- (ii) Official LYNX monthly ridership reports showing a breakdown of actual aggregate ridership by mode (i.e., Fixed-Route Service, LYMMO, Access LYNX, Van Plan and special shuttles).
- (iii) An operational service characteristics report for current services provided, which would include (1) revenue hours, (2) revenue miles, and (3) unlinked passenger trips.
- (iv) A comparison of actual revenue and expenditures to budgeted revenues and expenditures with explanations for variances that exceed \$50,000.
- (v) A route performance report, which reports and ranks each route which is located in the County for the Funding Partner, monthly based on the following:
 - (A) Subsidy per Passenger Trip
 - (B) Passengers per trip
 - (C) Passengers per Revenue Hour
 - (D) Passengers per Revenue Mile
 - (E) Percent farebox return (i.e., percent of Operating Expenses recovered through farebox).
- (vi) Current and contemporaneous versions of the LYNX regional model, which is the model used by LYNX to apportion total Operating Expenses, less adjustments, to the Funding Partners based on Fixed-Route Service hours, ADA client trips, and flex-service hours in their service area.
 - (A) A comparison of scheduled versus actual Revenue Miles.
 - (B) A comparison of scheduled versus actual Revenue Hours.
 - (C) A schedule of unanticipated extraordinary expenses for the prior quarter.
 - (D) A list of changes to authorized staffing.
 - (E) A schedule of total training and travel expenditures for each LYNX board member and employee for the immediately preceding quarter. This

schedule should specify the training event name, attendee name(s), date(s) of travel and/or training, event location, and total expenses of each trip.

(vii) Any other information the Funding Partner reasonably requests.

(c) **Additional Reporting.** On an annual basis, within thirty (30) days of receipt, LYNX shall provide the Funding Partner with a copy of all external audits, a copy of the Comprehensive Annual Financial Report, which shall include the Report on Internal Controls, Report on Compliance with Laws and Regulations, and a copy of the management letter.

5. **Independent Contractor.** LYNX expressly acknowledges that it is acting as an independent contractor, and nothing in this Agreement is intended or shall be construed to establish an agency, partnership or joint venture relationship between the parties, their employees, agents, subcontractors, or assigns, during or after performance of this Agreement. Each party hereto agrees that it shall be solely responsible for the wrongful acts of its employees, contractors and agents. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party.

6. **Amendments.** This Agreement may be amended only through a written document approved by both the Funding Partner's Board of Commissioners and the LYNX Governing Board, and executed by all parties hereto.

7. **Termination of Agreement.**

(a) **For Cause.** If LYNX or the Funding Partner (the "**Breaching Party**") fails to fulfill any material covenant, term or condition of this Agreement, the other party (the "**Non-Breaching Party**") shall give the Breaching Party written notice of such failure or violation. If such failure or violation is not cured within thirty (30) days from the date on which the Breaching Party receives such notice, the Non-Breaching Party may terminate this Agreement, which shall be effective upon thirty (30) days following the Breaching Party's receipt of a written notice from the Non-Breaching Party to that effect or such later date as specified in the notice.

(b) **For Convenience.** Either LYNX or the Funding Partner may terminate this Agreement at any time upon giving notice to that effect. Such termination shall be effective upon thirty (30) days receipt of written notice of termination from the party desiring to terminate this Agreement or such later date as specified in the notice.

8. **Audit.** The Funding Partner (or its lawfully designated designee), shall have the right to audit LYNX's books and records on an annual basis to determine compliance with the terms, conditions and obligations imposed by this Agreement. The Funding Partner shall have full access to all records, documents and information, whether on paper or electronic or other media as is necessary or convenient to perform the audit.

9. **Public Records Act.** In accordance with Chapter 119 of the Florida Statutes (Public Records Law), any “public record” created or received by the Funding Partner, including reports, specifications, drawings, maps, and tables, must be made for inspection, and upon request and payment, copying, unless such public record falls within an exception or exemption to the Public Records Act and each page is clearly and conspicuously marked as such.

10. **Record Keeping Procedure.** LYNX shall keep and maintain accurate records of all services rendered in the performance of this Agreement and shall keep such records open to inspection by the Funding Partner at reasonable hours during the entire term of this Agreement, plus three (3) years after expiration or termination of this Agreement. If any litigation, claim or audit is commenced prior to the expiration of the three (3) year period and extends beyond such period, the records shall be maintained until all litigation, including appeals, claims or audits have been concluded or resolved. Any person authorized by the Funding Partner shall have access to and the right to examine any of the records.

11. **Litigation and Venue.** In the event any party deems it necessary to take legal action to enforce any provision of this Agreement, the venue shall be in the Circuit Court of the Ninth Judicial Circuit, in Orange County, Florida or the United States District Court for the Middle District of Florida, Orlando Division.

12. **Remedies.** No remedy herein conferred upon any part is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any rights, power, or remedy hereunder shall preclude any other or further exercise thereof.

13. **Severability.** In the event that any section, paragraph, sentence, clause or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement which remaining portions shall remain in full force and effect.

14. **Waiver.** Performance of this Agreement by any party, after notice of default of any of the terms, covenants or conditions, shall not be deemed a waiver of any right to terminate this Agreement for any subsequent default, and no waiver of such default shall be construed or act as a waiver of any subsequent default.

15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the State of Florida. 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.

16. **Construction.** Captions and section headings in this Agreement are for convenience and reference only, and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

17. **Notices.** All notices, consents, approvals, waivers, and deletions which any party shall be required or shall desire to make or give under and in accordance with this Agreement shall be in writing and must be sent by certified United States mail with return receipt required, or by personal delivery with receipt required to the following addresses:

As to Funding Partner: City of Orlando
Transportation Planning Bureau
400 South Orange Avenue, P.O. Box 44990
Orlando, Florida 32802-4990
Attn: Director of Transportation

With copy to: City of Orlando
400 South Orange Avenue
Orlando, Florida 32801
Attn: City Attorney's Office

As to LYNX: Central Florida Regional Transportation Authority
455 North Garland Avenue
Orlando, Florida 32801-1518
Attn: John M. Lewis, Jr., Chief Executive Officer

With copy to: Central Florida Regional Transportation Authority
455 North Garland Avenue
Orlando, Florida 32801-1518
Attn: Blanche W. Sherman, Director of Finance

With a copy to: Akerman Senterfitt
420 South Orange Avenue, suite 1200
Orlando, Florida 32801
Attn: Patrick T. Christiansen, Esq.

18. **Binding Agreement.** This Agreement is binding upon the parties and shall inure to their successors or assigns.

19. **Effective Date.** The effective date of this Agreement shall be as of the date first set forth above. Unless terminated earlier in accordance with Section 7 of this Agreement, this Agreement will terminate on September 30, 2015, except for the provisions of this Agreement which by their terms survive the termination of this Agreement.

20. **Negotiations.** The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arms-length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, all parties drafted this Agreement jointly, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions, or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.

21. **No Third-Party Beneficiaries.** This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person or entity other than the parties in this Agreement.

22. **Recording.** This Agreement shall be filed with the Clerk of the City Court of Orange County, Florida, or such other public official responsible under general or special law for the public records of Orange County, Florida, in accordance with Section 163.01, Florida Statutes.

23. **Entirety of the Agreement.** This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and shall supersede all previous discussions, understandings, and agreements.

24. **Addendum.** There is attached hereto a certain Addendum consisting of one (1) page. To the extent there is a conflict between the terms of this Agreement and the terms of the Addendum, the terms of the Addendum will govern.

IN WITNESS WHEREOF, the Funding Partner and LYNX have duly and lawfully approved this Agreement and have authorized its execution and delivery by their respective officers, who have set their hands and their respective seals affixed below, all as of the date first written hereinabove.

[Signatures appear on following page]

SIGNATURE PAGE FOR FUNDING PARTNER

FUNDING PARTNER:

CITY OF ORLANDO

By: _____

Date: _____

ATTEST:

By: _____
Deputy Clerk

SIGNATURE PAGE FOR LYNX

**CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY**

By: _____
John M. Lewis, Jr.
Chief Executive Officer

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, and s/he acknowledged before me that s/he executed the foregoing instrument on behalf of CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY as its true act and deed, and that s/he was authorized to do so.

Name:
Notary Public
Serial Number:
Commission Expires:
STATE OF FLORIDA
COUNTY OF ORANGE

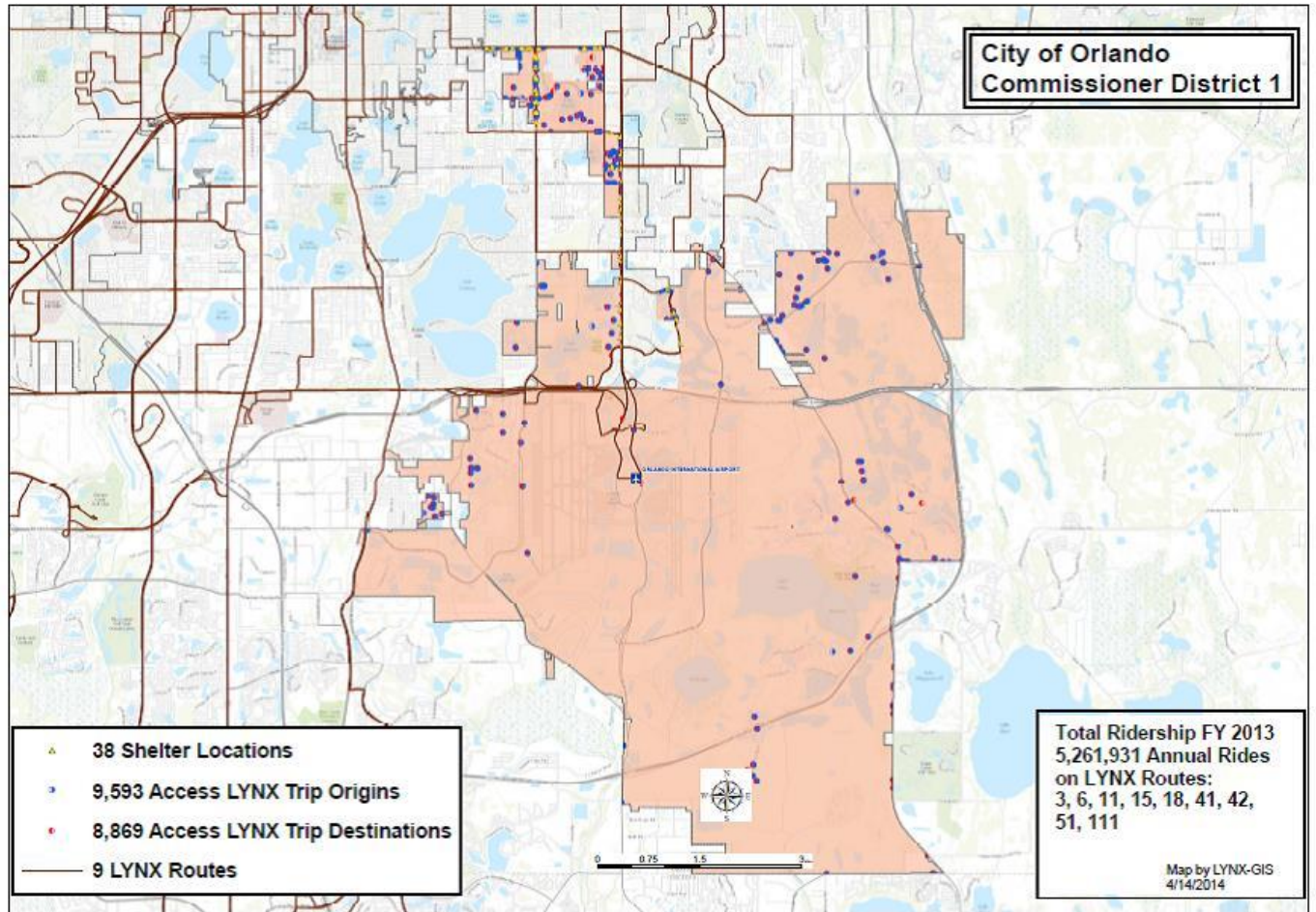
This Agreement is approved as to form for reliance only by LYNX and for no other person and for no other purpose.

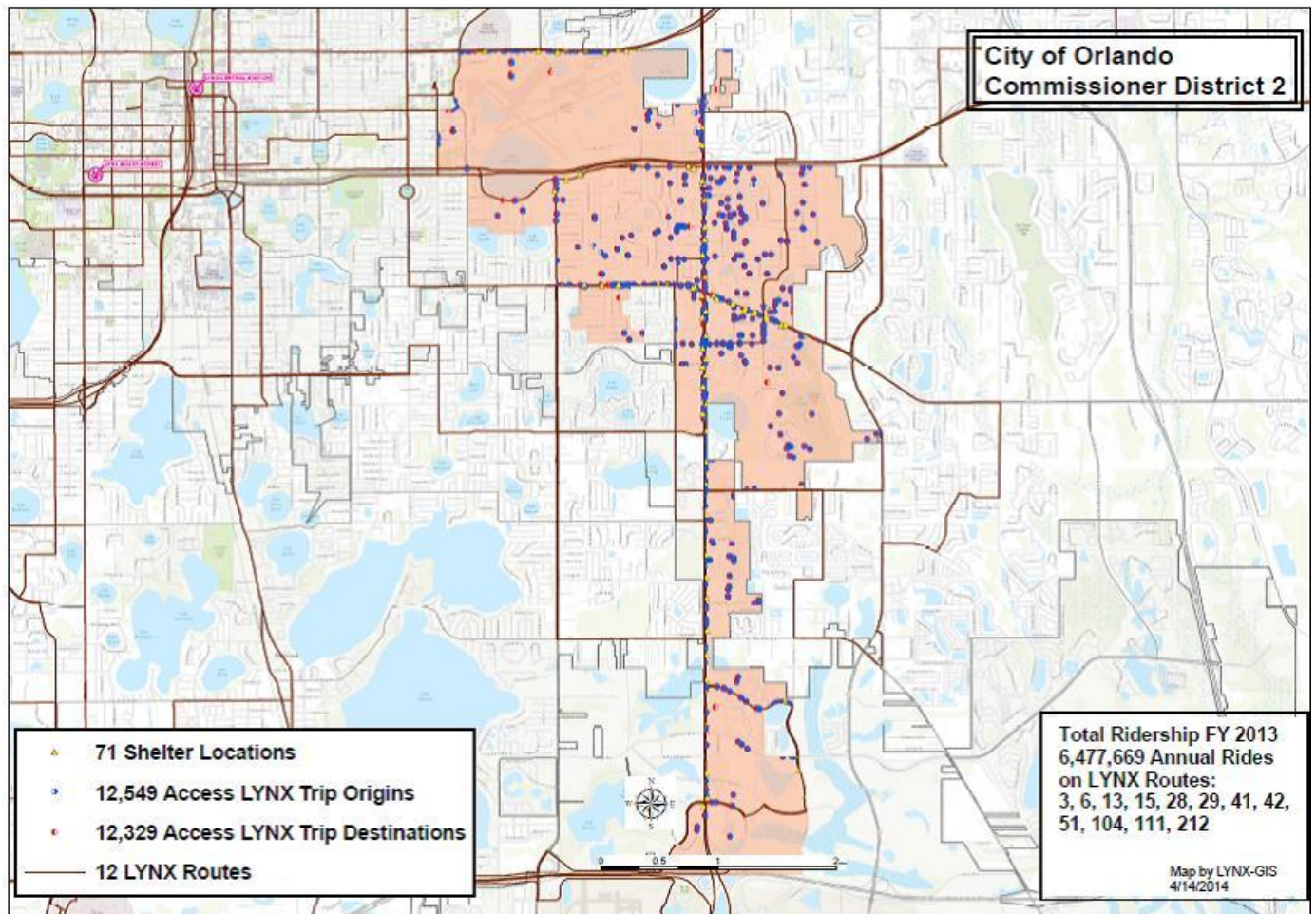
Akerman Senterfitt, Counsel for LYNX

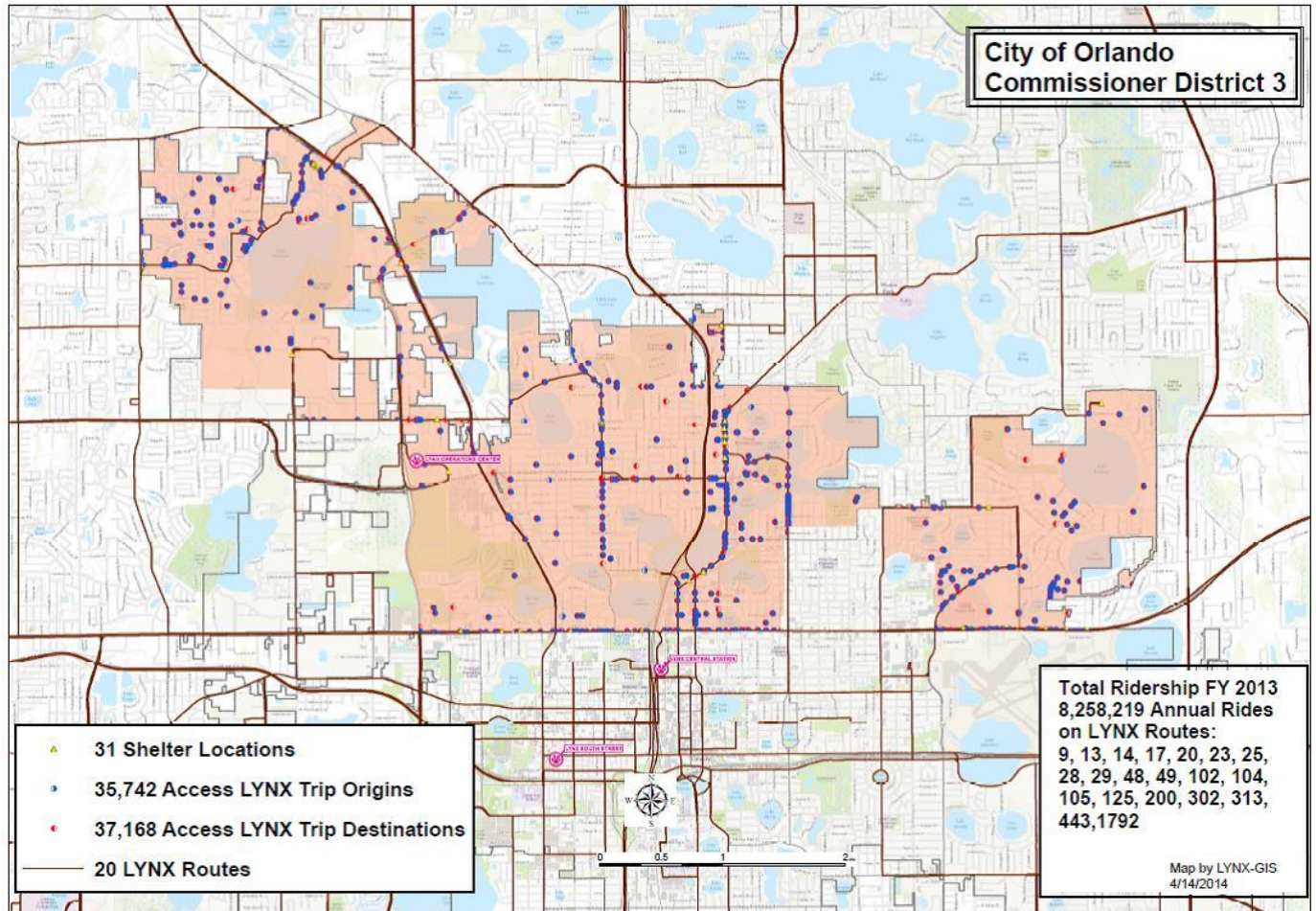
By: _____
Patrick T. Christiansen, Esq.

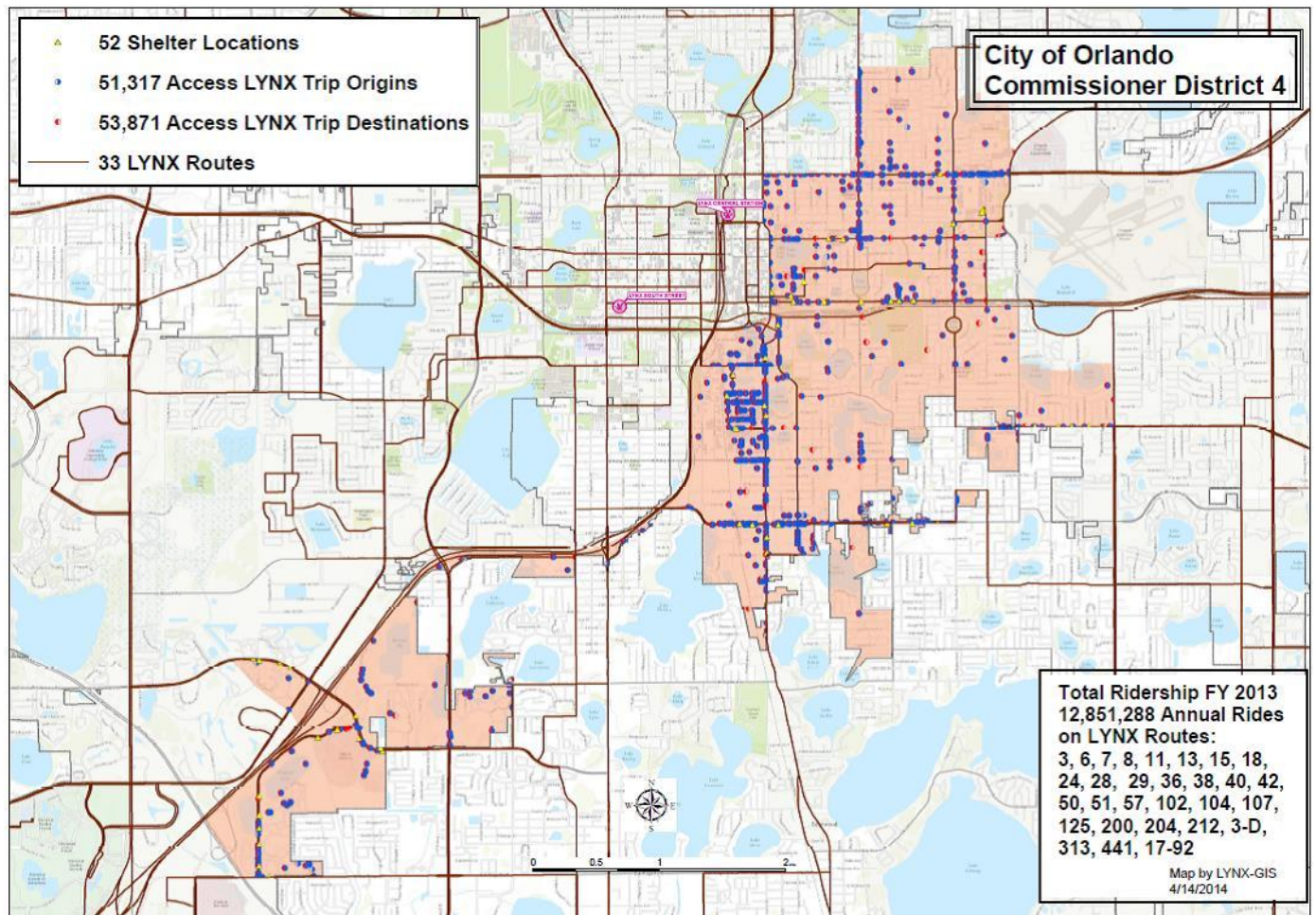
Exhibit "A"

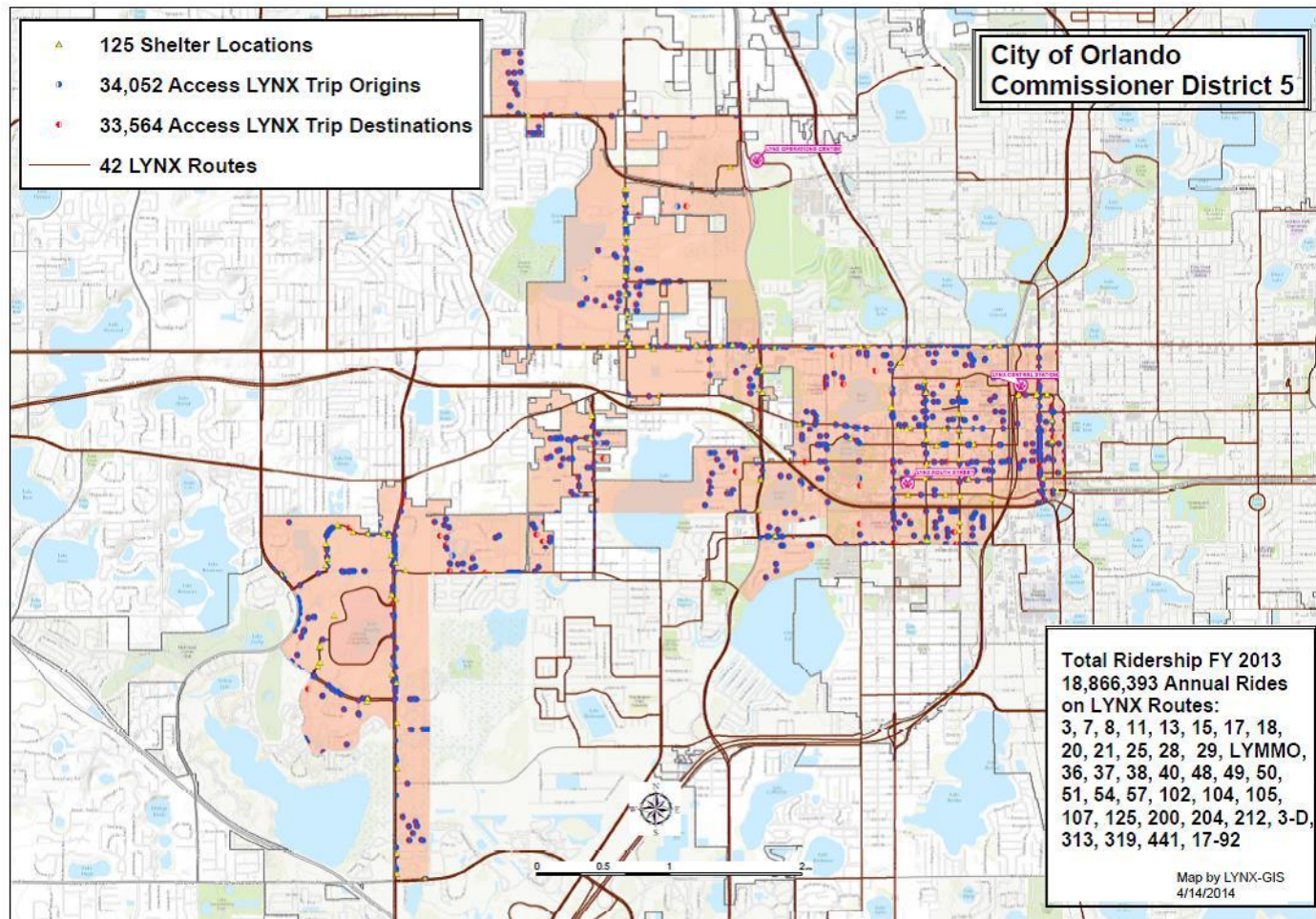
DESCRIPTION OF SERVICE AREA











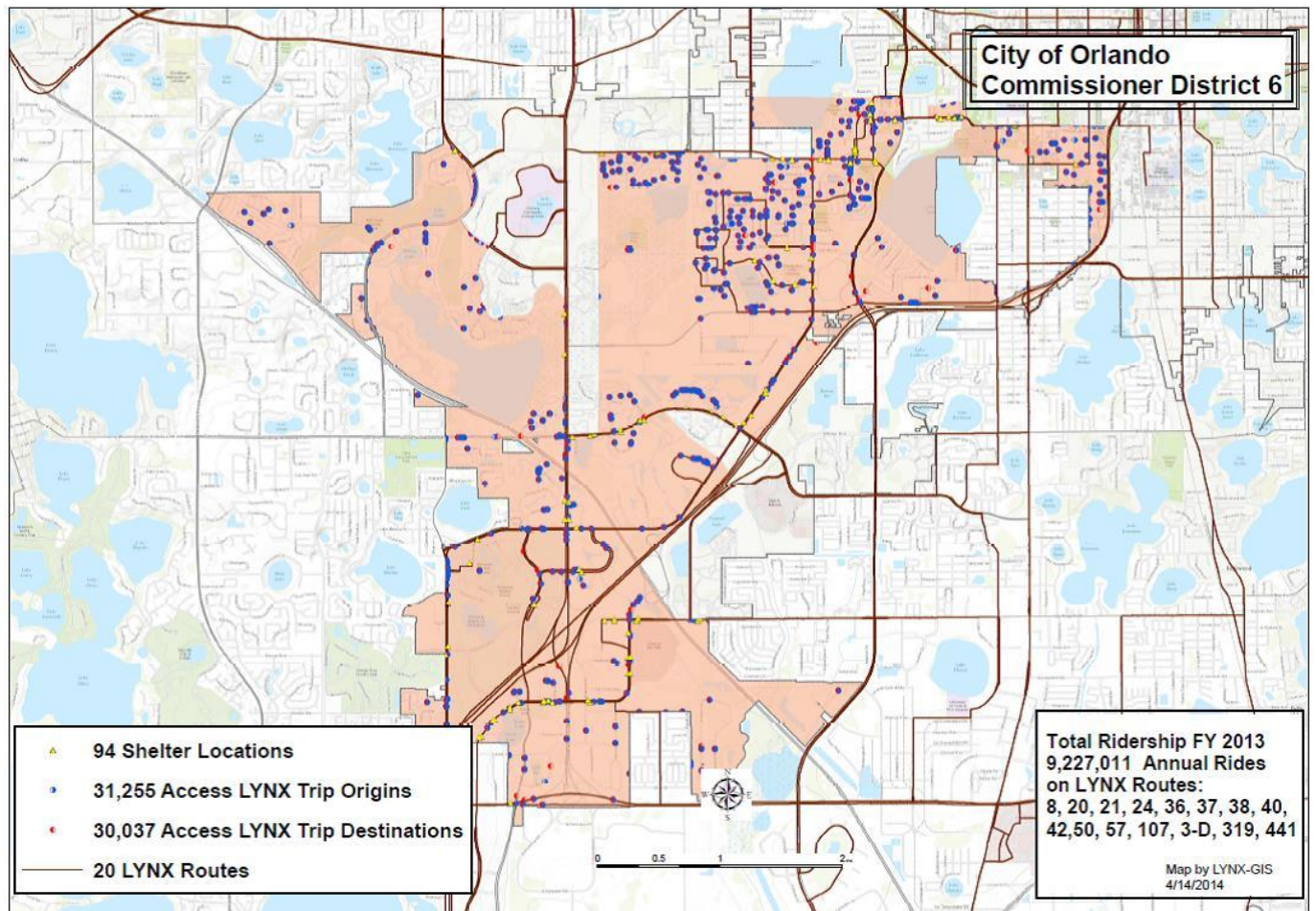


Exhibit "B"

DESCRIPTION OF APPROPRIATED AMOUNT

October through September **\$ 3,873,006**

Exhibit B City of Orlando Transit Service Costs For FY2015	
FY2015 Funding Request per Funding Model	\$ 3,895,598
Less: Prepaid Amount for Link 206	(22,592)
Total City Transit Service Cost	\$ 3,873,006

FY2015 Billing Schedule:	
October 2014	\$ 968,251.50
January 2015	968,251.50
April 2015	968,251.50
July 2015	968,251.50
Annual Funding Request from City	\$ 3,873,006

ADDENDUM TO AGREEMENT

25. The Funding Partner agrees to appropriate up to a maximum of three million eight hundred seventy-three thousand six dollars and zero cents (\$3,873,006) to LYNX for fiscal year 2014-2015 for the provision of public transportation services within the City of Orlando in accordance with this Agreement and to be allocated as follows:

(a) The base operating expenditures funding of \$3,873,006 shall be for fixed route bus service, Access LYNX, and other existing services.

(b) The \$3,873,006 shall be paid by the Funding Partner to LYNX in four (4) equal quarterly installments by Funding Partner's designated representative and shall be due on the first of each quarter beginning in October 2014, and payable no later than thirty (30) days after the due date. The first such payment under this Agreement shall be made no sooner than October 1, 2014 or the execution date of this Agreement. Notwithstanding the foregoing, in the event LYNX fails to submit the required quarterly reports or fails to comply with any material terms of this Agreement, the Funding Partner reserves the right to withhold the monthly payment pursuant to Section 3, of this Agreement.

26. The LYMMO services will be invoices in accordance with the terms set forth in a separate interlocal agreement between the City of Orlando and LYNX.