FOURTH AMENDMENT TO

AMENDED AND RESTATED INTERLOCAL AGREEMENT
(Pursuant to the Florida Interlocal Cooperation Act of 1969, Part I, Chapter 163, Florida Statutes)

By and Among

City of Orlando, Florida,

and

Central Florida Regional Transportation Authority (d/b/a LYNX)

And

Community Redevelopment Agency

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

June ___, 2016

Orlando City Council
Regular Meeting of _____, _____, 2016

Central Florida Regional Transportation Authority Governing Board
Regular Meeting of May 26, 2016

THIS FOURTH AMENDMENT TO AMENDED AND RESTATED INTERLOCAL AGREEMENT ("**Fourth Amendment**"), made in the City of Orlando, County of Orange, State of Florida, this _____ day of June, 2016, is made and entered into by and among the **CITY OF ORLANDO, FLORIDA**, a Florida municipal corporation duly created, organized, and existing under, and by virtue of, the laws of the State of Florida, and having its principal place of business at Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801 (the "**City**"), the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY, d/b/a LYNX**, a Florida body politic and corporate, duly created, organized, and existing under, and by virtue of, Part II, Chapter 343, Florida Statutes, and having its principal place of business at Lynx Central Station, 455 N. Garland Ave., Orlando, Florida 32801 (the "**Authority**") and the **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF ORLANDO, FLORIDA,** a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes, whose address is 400 South Orange Avenue, 6th Floor, Orlando, Florida, 32801 (the **"CRA"**).

WITNESSETH

WHEREAS, as provided by Article VIII, section 2(b) of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City, a Florida municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, the Authority was created and established by Part II, Chapter 343, Florida Statutes, for the purpose of governing and operating a public transportation system and public transportation facilities in Seminole, Orange, and Osceola Counties, and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of said purpose; and

WHEREAS, this Fourth Amendment is made and entered into by the City, the CRA and the Authority pursuant to the Florida Interlocal Cooperation Act of 1969, Part I, Chapter 163, Florida Statutes, the purpose of which is "to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities;" and

WHEREAS, the City, the Authority, and the CRA previously entered into an Amended and Restated Interlocal Agreement, dated August 2011 relating to a Downtown Orlando Transit Circulator Expansion Alternatives Analysis Study and Subsequent Funding for the Expansion Program, the LYNX Orlando Trail Project, the Creative Village Moving Parramore Forward Project, and the Downtown Orlando East/West Circulator New Starts Project, which has been subsequently amended by a First Amendment to Interlocal Agreement dated as of October 25, 2012, a Second Amemdnment to Interlocal Agreement dated as of September 8, 2014 and a Third Amendment to Interlocal Agreement dated as of February (collectively, the "**Interlocal Agreement**") (capitalized terms used herein, but not otherwise defined, shall have the meanings given such terms as set forth in the Interlocal Agreement); and

WHEREAS, the Authority and Balfour Beatty Construction, LLC ("**BBC**" or "**Design-Builder**") entered into a certain Design-Build Contract 14-C26 dated as of February 24, 2015 (the "**Design-Build Contract**") for the construction of a Parramore bus rapid transit project and a Parramore Environmental remediation project, both of which were funded in part through the Interlocal Agreement; and

WHEREAS, during the course of excavating test pits along Terry Avenue between project stations 424+00 to 427+00, BBC uncovered subsurface debris (the "**Subsurface Debris**"); and

WHEREAS, BBC identified and removed said Subsurface Debris~~, the identification and removal of which constitutes a material benefit to the City~~; and

WHEREAS, the costs related to the Subsurface Debris (the "**Debris Costs**") are not contained in the FTA Grant and the City has agreed to ~~"pre~~pay th~~e~~ose Debris Costs to the extent described in this Fourth Amendment~~"~~. The Debris Costs are in addition to and not a part of the Parramore BRT Local Match; and

WHEREAS, the parties now desire to amend the Interlocal Agreement for the additional matters described herein; and

WHEREAS, the City Council of the City of Orlando, Florida, hereby finds and declares that this Fourth Amendment promotes a valid and important public purpose and is in the best interest of the public health, safety, and welfare of the citizens of the City of Orlando.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, each to the other provided, the receipt and sufficiency of which is hereby acknowledged, the City, the CRA, and the Authority agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are hereby incorporated into and made a part of this Fourth Amendment as if fully set forth hereinafter.

2. **Amendments**. The following amendments are hereby made to the Amended and Restated Interlocal Agreement:

Section 8 of the Interlocal Agreement is amended by adding the following provision:

"8.6 The City agrees to ~~pre~~pay to the Authority an amount not to exceed $500,000.00, ~~the sum of $[$327,912]~~[1] to be used by the Authority to pay the Design-Builder for the identification and removal of subsurface debris which was located beneath Terry Avenue between project stations 424+00 to 427+00 and ~~to pay~~ associated delay costs resulting therefrom (the "**Debris Clean-Up Costs**"). ~~The Authority will have no liability in~~

[1] ~~City of Orlando to describe any nuances related to such payment, such as whether a portion of said payment constitutes a reallocation of funds from another aspect of the project (and thus the full $327,912 does not constitute new money).~~

~~connection with the Debris Clean-Up and it is specifically acknowledged that the Authority will not be responsible for any concrete debris piles located at the northeast corner of the project site.~~ City shall pay Authority the Debris Clean Up Cost within thrity days after the last of the following conditions has been met: (i) Authority and Design Builder enter into an agreement, in a form acceptable to the City, fully and completely settling the matter of the Debris Clean Up Costs in an amount not to exceed $500,000.00; (ii) both Authority and Design Builder execute a Release, in a form acceptable to the City, releasing and forever discharging the City, its employess, appointed and elected officials, agents and assigns, and anyone else for whom the City may be responsible, (upon City's payment of the Debris Clean Up Costs), from any further liability, claims, and damages, in law or in equity, related, directly or indirectly, to the Subsurface Debris, the Debris Costs and the Debris Clean Up Costs. ~~—~~Upon the City's payment of the Debris Clean Up Costs to the Authority, ~~However, should the City prepay the Authority the cost of the Debris Clean Up, then~~ the Authority will promptly pay same to the Design-Builder. ~~the cost of Debris Clean-Up up to the amount of the prepayment made to the Authority by the City."~~

3. **Severability.** The invalidity or unenforceability of any term or provision of this Fourth Amendment or the non-applicability of any such term or provision to any person or circumstance shall not invalidate or affect the remainder of this Fourth Amendment, and the remaining terms and provisions herein shall remain in full force and effect and shall be construed as if such invalid, unenforceable, or non-applicable provision or term was omitted.

4. **Entire Agreement.** This Fourth Amendment represents the entire understanding and agreement between the parties with respect to the subject matter hereof. None of the terms and provisions hereof may be amended, supplemented, waived or changed orally, but only by a writing signed by each of the parties hereto.

5. **Rules of Construction**. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

6. **Amendment Execution. Use of Counterpart Signature Pages.** This Fourth Amendment may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original. Such counterparts shall together constitute one and the same instrument.

7. **Full Force And Effect Of Interlocal Agreement.** Except as amended by this Fourth Amendment, all other terms and provisions of the Interlocal Agreement shall remain valid, effective, and in full force.

[Signatures appear on the following pages]

IN WITNESS WHEREOF, the City, the Authority, and the CRA have duly and lawfully approved this Fourth Amendment and have authorized its execution and delivery by their respective officers, who have set their hands and had their seals affixed below, all as of the date first written herein above.

SIGNATURE PAGE OF THE CITY

FOR THE CITY OF ORLANDO, FLORIDA, a Florida municipal corporation:

_____
Mayor / Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA:

_____
City Clerk Date

STATE OF FLORIDA)
) ss:
COUNTY OF)

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2016, by _____, as the Mayor/Mayor Pro Tempore. He/she is:

☐ personally known to me; or

☐ produced a driver's license issued by the _____ Department of Highway Safety and Motor Vehicles as identification; or

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Print, Type or Stamp Commissioned Name of Notary Public)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF ORLANDO, FLORIDA:

_____
Chief Assistant City Attorney Date

SIGNATURE PAGES OF THE AUTHORITY

FOR THE CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY, a Florida statutory agency:

By:_____
Edward L. Johnson, Chief Executive Officer

ATTEST:

By:_____
Name:
Title:

STATE OF FLORIDA)
) ss:
COUNTY OF)

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2016, by Edward L. Johnson, Jr., as the Chief Executive Officer for the Central Florida Regional Transportation Authority. He is:

☐ personally known to me; or
☐ produced a driver's license issued by the _____ Department of Highway Safety and Motor Vehicles as identification; or

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Print, Type or Stamp Commissioned Name of Notary Public)

This Fourth Amendment is approved as to form only for execution by the Authority, and this approval is not to be relied upon by any other person or for any other purpose.

AKERMAN LLP

By: _____
Name:
Title:

SIGNATURE PAGE OF THE CRA

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF ORLANDO, FLORIDA

By:_____
Buddy Dyer, as its Chairman

ATTEST:

By:_____
Thomas Chatmon, as its Executive Director

STATE OF FLORIDA)
) ss:
COUNTY OF)

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2016, by Buddy Dyer, as Chairman for the Community Redevelopment Agency of the City of Orlando, Florida. He is:

☐ personally known to me; or
☐ produced a driver's license issued by the _____ Department of Highway Safety and Motor Vehicles as identification; or

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Print, Type or Stamp Commissioned Name of Notary Public)