LYNX Finance & Audit Committee Agenda

Meeting Date: 9/16/2022
Meeting Time: 2:00 PM

Central Florida Regional Transportation Authority
455 N. Garland Ave.
2nd Floor Open Space
Orlando, FL 32801

As a courtesy to others, please silence all electronic devices during the meeting.

1. Call to Order

2. Approval of Committee Minutes

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3. Public Comments

- Citizens who would like to speak under Public Comments shall submit a request form to the Assistant Secretary prior to the meeting. Forms are available at the door.

4. Chief Financial Officer Report

5. Consent Agenda

A. Award Contracts

i. Authorization to Negotiate and Award Contract #23-C15 to Garcia Civil Contractors, LLC for Construction Improvements to the Florida Mall Transfer Center — Pg 9

ii. Authorization to Negotiate and Award Contract #23-C14 to Kiewit Infrastructure South Co. for the Construction Phase of the LYMMO Orange Line State of Good Repair — Pg 11

iii. Authorization to Negotiate and Award Contract #22-C89 to Palmdale Oil Company, Inc. for Fuel Delivery of Ultra Low Sulfur Diesel Through the End of FY2023 — Pg 13

iv. Authorization to Negotiate and Award Contract #22-C90 to Palmdale Oil Company, Inc. for Fuel Delivery of 87 Octane Unleaded Gasoline Through the End of FY2023 — Pg 15

v. Authorization to Negotiate and Award a Contract to Petrotech Southeast, Inc. for Waste Disposal Services — Pg 17

B. Extension of Contracts

i. Authorization to Extend Contract and Exercise Optional Tasks with WSP USA, Inc. for Contract #21-C50 — Pg 19

ii. Authorization to Extend Contract with Akerman, LLP for Legal Services - General Counsel — Pg 21

7. Other Business

8. Adjourned

Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board, agency, or commission with respect to any matter considered at a meeting or hearing, he will need a record of the proceedings, and that, for such purposes, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans With Disabilities Act of 1990, persons needing a special accommodation at this meeting because of a disability or physical impairment should contact Benjamin Gonzalez at 455 N. Garland Ave, Orlando, FL 32801 (407) 254-6038, not later than three business days prior to the meeting. If hearing impaired, contact LYNX at (407) 423-0787(TDD).

LYNX
Central Florida Regional Transportation Authority
Finance and Audit Committee Meeting Minutes

PLACE: LYNX Central Station
455 N. Garland Avenue
2nd Floor, Board Room
Orlando, FL 32801

DATE: August 18, 2022

TIME: 2:00 p.m.

Members in Attendance:
Amanda Clavijo, Osceola County
Jamie Kersey, FDOT, 5th District
Tim Jecks, Seminole County
Michelle McCrimmon, City of Orlando
Nanette Melo, Orange County
James Goldsmith, LYNX Attorney

Staff in Attendance:
Leonard Antmann, Chief Financial Officer
Michelle Daley, Director of Finance
Tony DeGuzman, Manager of Financial Planning & Budget

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1. Call to Order

Chair Clavijo called the meeting to order at 2:00 p.m.

2. Approval of Minutes

Chair Clavijo requested a motion for approval of the July 21, 2022 Finance & Audit Committee meeting minutes. Motion to approve the July 21, 2022 minutes was made by Tim Jecks, second by Michelle McCrimmon. The minutes were unanimously approved as presented.

3. Public Comments

No members of the public were present to speak.

4. Chief Financial Officer's Report

Chair Clavijo recognized Lenny Antmann, Chief Financial Officer.
Mr. Antmann provided the following updates:

- Orange County just received the OPAGA audit draft report. We were told Orange County has substantially met all six of the research tasks defined in the state statutes.

- We anticipate receiving the first draft of the ERP RFP from Genesis Consulting early next week. The goal is to issue the RFP in early September.
- MSL auditors will be on-site next week to begin interim work for the annual audit. They will be back in December to continue with the audit.
- It was just announced that LYNX was awarded a FDOT competitive Low-No grant of $16M towards 20 electric buses and charging infrastructure.
- The agenda we have will go forward to Oversight and Board.
- Next week we will meet with Oversight asking for approval of the FY2023 Operating and Capital Budgets to move forward to the Board. We will come back to this committee in September for review and approval of the FY2023 funding agreements; those will also move forward to Oversight and Board. In September we will go back to the Board for adoption of the FY2023 Operating and Capital Budgets.

Mr. Antmann concluded his report.

5. Discussion Items

A. Review of the FY2022 3rd Quarter Operating Results

Total Revenue is $5.8M favorable to budget through nine months. Expenses were $12.1M favorable to budget through nine months.

Customer fares are $900K favorable; the third quarter ridership has increased.

Interest & Other Income is showing a loss through nine months due to several retired project write-offs that were not fully depreciated resulting in a due-back to FTA. We are starting to see interest income return and expect it to continue to grow in FY2023.

Traditional Federal revenue has off-setting items: We are behind on planning studies off-set by the fact that we are ahead on drawing down traditional Federal 5307 money used for preventative maintenance. Additional favorableness comes from receiving $1.4M from FEMA for reimbursement of COVID related PPE, sanitizing materials, and temporary labor, and additional FTA funding received for rural routes.

The ARPA Federal Revenue is $2.8M favorable; within the lines of business, the favorableness is all on the Paratransit side with Fixed Route being unfavorable. We will have drawn all the ARPA funds down in FY2023.

Total expenses are $121M favorable. Salaries, Wages and Benefits are favorable by $1.4M attributable to the open positions. Other Services are favorable by $4.2M attributed to planning studies not yet completed, contract maintenance timing, and reduced temporary labor associated with COVID cleaning. Fuel is $2M favorable year to date due to our fuel hedging program. Materials and supplies are $1.5M favorable all on fixed route associated with reduced COVID PPE and sanitizing material usage. Purchased transportation is $2.7M favorable; entirely on Paratransit due to fewer than budgeted trips. Leases & Miscellaneous is favorable $300K associated with training and travel that has not yet returned to budgeted pre-COVID levels.

6. Consent Agenda

A. Award Contracts

i. Authorization to Negotiate and Award a Contract to Premier Lawn Maintenance, LLC for Landscaping Services

ii. Authorization to Negotiate and Award a Contract to Precision Transmission Inc. for the Procurement of Remanufactured ZF Transit Bus Transmissions

iii. Authorization to Negotiate and Award a Contract to Bridgestone Americas Tire Operations, LLC for Transit Bus Tire Leasing Services

iv. Authorization to Negotiate and Award a Contract to RMK Consulting, LLC DBA Kodiak Property Maintenance for the Repainting of Bus Shelters

B. Extension of Contracts

i. Authorization to Exercise First Option Year on Piggybacking Agreement from Orange County Contract #Y19-1032 for Healthcare Benefits Consultant Services

ii. Authorization to Exercise the Second Option Year of Contract #19-C35 with Employers Choice Online, Inc. for Pre-Employment Background Screening & Related Services

iii. Authorization to Exercise the Final Option Year of Contract #18-C130 & #18-C128 for the Purchase of Taxi and Transportation Network Company (TNC) Services

C. Miscellaneous

i. Authorization to Modify the Contract with Transloc, Inc. for Real-Time Trip Information and for Trip Reservations on NeighborLink Services

ii. Authorization to Transfer Five (5) Laptops to The Christian Tech Center Ministries, Inc.

iii. Authorization to Dispose of Items Accumulated Through the Lost and Found Process

iv. Authorization to Dispose of Items Accumulated Through the Lost and Found Process

Jamie Kersey, FDOT, stated that she will abstain from voting on item 6.C.iv. due to conflict.

Michelle McCrimmon made a motion to approve Consent Agenda 6.A. - C.iii. Second by Tim Jecks. Motion passed unanimously.

Tim Jecks made a motion to approve Consent Agenda item 6.C.iv, second by Michelle McCrimmon. Motion passed, Jamie Kersey - FDOT abstained.

7. Action Items

A. Approval of the FY2023 Proposed Operating Budget

Mr. Antmann presented the Proposed FY2023 Operating Budget. Mr. Antmann explained that the operating budget is the same as was presented in April.

The key assumptions are as follows:

- that the level of service for Fixed Route and NeighborLink will remain consistent with prior years, projected ridership are estimated at 75% for fixed route and 95% for paratransit of pre-pandemic levels with no fare increase.
- The Federal Preventative Maintenance will be budgeted at the board approved level of $6.8M.
- We will maintain conservative budgeting for COVID protocols as provided by the CDC.
- Funding Partner contributions are based on the approved Regional Funding Model.
- Local Capital Contribution will increase to $3 per service hour and NeighborLink Service Hours will now be included in the contribution calculation.
- The budget presented is based on the partner selected model scenario. The budgets are based on current base case business. If the Orange County Sales Tax Initiative referendum is passed, it will be addressed through budget amendments.

We will monitor the Federal Infrastructure Bill implications. The formula funds we traditionally receive have been increased approximately $10M a year for a five-year period. The balance of the dollars will be made available through federal competitive grants – one of which we announced today is $16M for electric buses and charging infrastructure. State funding is projected to be consistent with the FY2022 award. Advertising revenue projected in line with current trends.

Wages and Benefits are budgeted consistent with funding partners and Board approved Union Labor Agreement increases as well as increases for medical expenses based on current trends.

We will continue the Fuel Hedging program to stabilize the costs of diesel and unleaded fuel and invest in low-no emission vehicles to include electric and CNG. It is projected only one-third of the fleet will be diesel in FY2023.

We will continue CDC enhanced cleaning protocols, right sizing operational staff through service planning and improving customer service through new technology.

We will focus on Organization Development with enhance training and staff development programs and Diversity, Equity and Inclusion programs.

The Pine Hills Transfer Station design is complete and permits have been received; the RFP will be issued once the review by FDOT is complete. We are in the process of identifying the Southern Operations Base (SOB) location options for land acquisition. The LYNX staff will be coordinating workshops with funding partners and decision makers on the location options.

Chair Clavijo asked if an update could be provided on the SOB project. Mr. Slot provided a brief update stating that the options have been reduced down to a group of sixteen sites and will reduce it again by half before the next evaluation. The next step is to meet with each of the counties/funding partner board members before the end of this fiscal year to review the criterion used and how selections were made to assure alignment with how the counties would like to see the Southern Operations Base developed.

The proposed FY2023 Operating budget is balanced at $177.3M; a $2.1M increase over FY2022. Customer fares increase $1.4M, Contract Services decrease $600K on Paratransit based on TD contracts. Federal Revenue returns to normal allocation of approximately $13.5M which covers preventative maintenance, all facility and tire lease expenses, ADA, and planning studies. We will use $31.6M of Budget Stabilization funds. Local Revenue increase of $1.3M associated with additional I-Drive service and increased service hour rate billing to the other municipalities for service.

Chair Clavijo asked if the new Osceola Narcoossee route allocation increase is reflected in the proposed budget. Mr. Antmann stated that the revenue will be added through the budget amendment after the contract is finalized. This route will begin in December and be funded by Osceola and the State as a separate contract through the duration of the grant.

Wages and Benefits increase approximately $5M primarily on fixed route, consistent with funding partners, Board approved Union Labor Agreement increases and increases for medical expenses based on current trends. Fuel is budgeted $2.3M higher reflecting the higher cost of fuel. Materials and Supplies increase $400K primarily associated with the increase cost of oil-based vehicle fluids. Purchased transportation increase $800K associated with projected cost of living increase based on our current contract. The contract expires during FY2023, when the new paratransit contract is awarded, we will include any adjustment in the budget amendment. Leases & Miscellaneous increase $400K associated with the transition from license based in-house software to software-as-a-service and includes switching to Office 365, and transitioning Trapeze, Paratransit and NeighborLink to cloud service.

Partner funding for operating contributions increased $8.5M, total capital contributions increase $1.3M associated with the new $3 service hour rate.

Mr. Jecks asked if the FY2023 partner funding or budget stabilization balance will be affected if the Orange County Tax initiative passes. Mr. Antmann stated that if the initiative passes in November 2022, collection will not begin until January 2023. Orange County would begin receiving funds several months later (April/May) and distribution to LYNX would be the last couple months of FY2023. The majority of the initial expenditures will be capital items such as additional busses and infrastructure. We do not expect to see significant impact in FY2023 and it will not impact funding for Osceola and Seminole counties.

Mr. Jecks asked when the stabilization funds are expected to run out. Mr. Antmann stated that the timing would depend on the board member decisions. The current model projects to be fully utilized in about five years.

Chair Clavijo asked if there is a motion to approve Agenda Item 7.A. to present the FY2023 Proposed Operating Budget to the LYNX Oversight Committee for Approval.

Michelle McCrimmon made a motion to approve Action Item 7.A. Second by Tim Jecks. Motion passed unanimously.

B. Approval of the FY2023 Proposed Capital Budget

Mr. Antmann presented the Proposed FY2023 Capital Budget.

The Key assumptions are to continue fleet replacement to provide safe and reliable service, continue passenger amenities program improvements, provide technological improvements to improve customer experience and facility improvements at LOC and LCS. Enhance security infrastructure at facilities and continue shelter program. Pine Hills Transfer Station construction scheduled to begin FY2023, Florida Mall Super-Stop Improvement RFP is out for bid and continued site suitability analysis for the Southern Operations facility.

The total FY2023 capital budget is $102.4M, an increase of $16M over the approved FY2022 budget. The majority of the budget is the purchase of new vehicles; a portion of the vehicle funding is carry-over from FY2022 due to vendor delays. The other two major areas are facilities and passenger amenities. The capital budget is fully funded. The majority of the funding is provided by federal grants. $4.7M State funding contributed to Pine Hills Transfer Center and vehicles that service rural routes.

Tim Jecks made a motion to approve Action Item 7.B. Second by Michelle McCrimmon. Motion passed unanimously.

8. Other Business

No other business.

9. Adjourned

The meeting adjourned at 2:59 p.m.

LYNX Finance & Audit Committee Agenda

Consent Agenda Item #5.A. i

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
Jeffrey Reine
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization to Negotiate and Award Contract #23-C15 to Garcia Civil Contractors, LLC for Construction Improvements to the Florida Mall Transfer Center**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to negotiate and award Contract #23-C15 to Garcia Civil Contractors, LLC for construction improvements to the Florida Mall Transfer Center in the amount of $741,719.

BACKGROUND:

LYNX has been working over the past few years with Simon Properties, the owners of the Florida Mall, for improvements to the bus transfer location. The proposed improvements will include an extension of the existing infrastructure by 450 feet. This will allow for each bus route to have its own location to board and alight passengers. Improvements include custom shelters (procured under a separate existing manufacturing contract), increase lighting, installation of sidewalk and ADA bus pads, conduit for future ITS and CCTV components, and improved landscaping.

LYNX issued two Request for Proposals (RFPs) with no respondents determined to be responsible and responsive. Subsequently, LYNX packaged this with another similar procurement as an Invitation for Bid (IFB) and again received no respondents determined to be responsible and responsive. The current construction market is extremely volatile in terms of price and contractor availability likely leading to the issues with receiving bids.

The final IFB was issued on May 27, 2022 with a submission date of August 17, 2022 and a bid opening date of August 18, 2022.

LYNX received one responsible and responsive bidder. The bidder is a Certified Disadvantaged Business Enterprise. LYNX staff recommends award to this bidder, Garcia Civil Contractors, LLC, for construction improvements to the Florida Mall transfer center in the amount of $741,719.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

No DBE Goal has been established for this contract. However, the responsible and responsive bidder is a Certified DBE.

FISCAL IMPACT:

The FY2023 Proposed Capital Budget includes $1,797,826 for the Florida Mall Super Stop Construction project. This project is 100% Federally funded.

Consent Agenda Item #5.A. ii

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
Lismar Matos Hernandez
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization to Negotiate and Award Contract #23-C14 to Kiewit Infrastructure South Co. for the Construction Phase of the LYMMO Orange Line State of Good Repair**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to negotiate and award Contract #23-C14 to Kiewit Infrastructure South Co. for the Construction Phase of the LYMMO Orange Line State of Good Repair in the amount not to exceed $2,512,170.

BACKGROUND:

In August 2020, the LYNX Board of Directors granted permission to proceed with a Request for Proposal (RFP) for the Construction Phase for the LYMMO Orange Line State of Good Repair.

The purpose of this project is to maintain the LYMMO Orange Line in a state of condition that both supports the aesthetics of downtown and maintains the operation functionality of the bus lane. The Federal Transit Administration's (FTA) State of Good Repair Formula Program grants are distributed to state and local governments in urbanized areas for repairs and upgrading of rail and bus rapid transit systems that are at least seven years old.

Currently, the LYMMO Orange Line is in its 22nd year of service and in need of several upgrades, repairs and replacement of various components. In March of 2020, LYNX awarded a task order for design to address the most significant issues. This phase has been finished and we are now requesting authorization to proceed with construction.

Construction will support a variety of tasks to include, but not be limited to: replacement of cracked or damaged concrete panels, replacement of damaged or missing expansion joints, installation of new pavement markings, and reflective channelizing devices. The contract will include all labor, material, equipment, and supplies required.

The initial RFP was released on October 14, 2020 and responses due on November 18, 2020. A single proposal was received that was determined to far exceed the engineering cost estimate for the project. Based on this, the scope of work was reviewed to ensure re-solicitation would result in more competitive pricing. Hence, the Florida Mall project was combined with the LYMMO Orange Line State of Good Repair project. The IFB was released on February 25, 2022 with bids due on April 12, 2022, but no bids were received. As a next step, a review of the scope of work and cost estimate was performed, which then resulted in a third IFB to include only the LYMMO Orange Line State of Good Repair project released on May 27, 2022.

A single bid was received on August 8, 2022. This is the third bid process for this project with only a single bid response and, based on the evaluation, Kiewit Infrastructure South Co. was the only lowest, responsible, and responsive bidder in the amount of $2,512,170.

LYNX staff requests authority to award this contract Kiewit Infrastructure South Co. for a total cost of $2,512,170.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

No DBE Goal has been established for this contract. LYNX encourages the Contractor to make every attempt to obtain participation of certified DBEs and other small businesses in the completion of this contract

FISCAL IMPACT:

The FY2022 Approved Capital Budget includes $1,240,099 for the Construction Phase for LYMMO Orange Line, and additional state of good repair grants were made available for FY2023. This project is Federally funded through the State of Good Repair grant.

LYNX Finance & Audit Committee Agenda

Consent Agenda Item #5.A. iii

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
Christopher Plummer
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization to Negotiate and Award Contract #22-C89 to Palmdale Oil Company, Inc. for Fuel Delivery of Ultra Low Sulfur Diesel Through the End of FY2023**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to negotiate and award contract #22-C89 to Palmdale Oil Company, Inc. for fuel delivery of Ultra Low Sulfur Diesel through the end of FY2023.

BACKGROUND:

On June 30, 2022 LYNX staff released an Invitation for Bid (IFB) for the delivery of Ultra Low Sulfur Diesel and 87 Octane Unleaded. The bids were due back on August 1, 2022, with five (5) suppliers' submitted bids received.

The current Contract expires on September 30, 2022. The bid required suppliers to provide a fixed fee cost per gallon known as an "Adder Fee" to deliver the fuel. The "Adder Fee" is added to the cost of the fuel. The fuel cost is set based on the daily rack average of U.S. Gulf Coast Platts (USGC) index. Other charges include a standard freight rate per gallon, plus a fixed pump off fee for above ground tanks as required.

This is a contract to supply the services on an as-needed basis. LYNX shall not be obligated to purchase any minimum quantity of fuel. LYNX averages an annual fuel consumption of 2.2 million gallons Ultra Low Sulfur Diesel.

The bid results were tabulated as follows:

Ultra Low Sulfur Diesel	
Company	ULSD Transportation Adder
Palmdale Oil Company	0.1599
Colonial Oil Industries	0.1785
Petroleum Traders	0.1902
Mansfield Oil Company	0.2196
Saratoga Rack Marketing LLC	0.2750

The ordinal ranking for the Ultra-Low Sulfur Diesel bidders was:

Ultra Low Sulfur Diesel	
Company	Ordinal Ranking
Palmdale Oil Company	1
Colonial Oil Industries	2
Petroleum Traders	3
Mansfield Oil Company	4
Saratoga Rack Marketing LLC	5

LYNX recommends awarding the contract for Ultra Low Sulfur Diesel (ULSD) Fuel Transportation Services to Palmdale Oil Company, Inc. for the period of October 1, 2022 – September 30, 2023.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

The FY2023 Proposed Operating Budget includes $6,488,083 for unleaded and diesel fuel purchases.

Consent Agenda Item #5.A. iv

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
Christopher Plummer
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization to Negotiate and Award Contract #22-C90 to Palmdale Oil Company, Inc. for Fuel Delivery of 87 Octane Unleaded Gasoline Through the End of FY2023**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to award contract #22-C90 to Palmdale Oil Company, Inc. for fuel delivery of 87 Octane Unleaded Gasoline through the end of FY2023.

BACKGROUND:

On June 30, 2022 LYNX staff released an Invitation for Bid (IFB) for the delivery of Ultra Low Sulfur Diesel and 87 Octane Unleaded. The bids were due back on August 1, 2022, with four (4) suppliers' submitted bids received.

The current Contract expires on September 30, 2022. The bid required suppliers to provide a fixed fee cost per gallon known as an "Adder Fee" to deliver the fuel. The "Adder Fee" is added to the cost of the fuel. The fuel cost is set based on the daily rack average of U.S. Gulf Coast Platts (USGC) index. Other charges include a standard freight rate per gallon, plus a fixed pump off fee for above ground tanks as required.

This is a contract to supply the services on an as-needed basis. LYNX shall not be obligated to purchase any minimum quantity of fuel. LYNX averages an annual fuel consumption of 1.3 million gallons 87 Octane Unleaded gasoline.

The bid results were tabulated as follows:

87 Octane Gallon	
Company	87 Octane Transportation Adder
Palmdale Oil Company	0.0379
Colonial Oil Industries	0.1000
Saratoga Rack Marketing LLC	0.1275
Mansfield Oil Company	0.1632

The ordinal ranking for the 87 Octane Unleaded gasoline bidders:

87 Octane Gasoline	
Company	Ordinal Ranking
Palmdale Oil Company	1
Colonial Oil Industries	2
Saratoga Rack Marketing LLC	3
Mansfield Oil Company	4

LYNX recommends awarding the contract for 87 Octane Unleaded Gasoline Fuel Transportation Services to Palmdale Oil Company, Inc. for the period of October 1, 2022 – September 30, 2023.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

The FY2023 Proposed Operating Budget includes $6,488,083 for unleaded and diesel fuel purchases.

Consent Agenda Item #5.A. v

To: **LYNX Finance & Audit Committee**

From: **Elvis Dovales**
Director Of Maintenance
Ricky Gonzalez
(Technical Contact)

Phone: **407.841.2279 ext: 6239**

Item Name: **Authorization to Negotiate and Award a Contract to Petrotech Southeast, Inc. for Waste Disposal Services**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to negotiate and award a contract to Petrotech Southeast, Inc., for waste disposal services for an initial three (3) year term for an amount not to exceed $170,000. The contract will have the options to extend for two (2) one (1) year terms.

BACKGROUND:

This service is required in order to ensure LYNX complies with Federal, State, City and County ordinances and laws related to disposal of regulated and hazardous waste that is produced during the course of vehicle servicing and maintenance operations.

On July 25, 2022, an Invitation for Bid (IFB) was released for the procurement of waste disposal services. The IFB was posted on DemandStar, and sent directly to interested suppliers. The following two submissions were returned by the return deadline of August 19, 2022:

Firm
Alpha-Omega Training and Compliance, Inc.
Petrotech Southeast, Inc.

Staff is recommending the contract be awarded to Petrotech Southeast, Inc., the responsive and responsible bidder with lowest cost submission.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

The FY2023 Proposed Operating Budget includes $27,500 for Waste Disposal Services.

Consent Agenda Item #5.B. i

To: **LYNX Finance & Audit Committee**

From: **James Boyle**
Director Of Planning And Development
Myles O'Keefe
(Technical Contact)
Alena Dvornikova
(Technical Contact)

Phone: **407.841.2279 ext: 6036**

Item Name: **Authorization to Extend Contract and Exercise Optional Tasks with WSP USA, Inc. for Contract #21-C50**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to execute a one (1) year contract extension of Contract #21-C50 with WSP USA, Inc., for Southern Operations base, authorize completion of optional tasks included in the Request for Proposal (RFP) and increase the not to exceed amount to $711,721.

BACKGROUND:

On July 22, 2021 staff received authorization to award contract #21-C50 to WSP USA, Inc. for Southern Operations and Maintenance Facility Site Selection and Suitability Study and recommendation(s).

On December 28, 2021 a contract modification was processed to extend the initial contract through September 30, 2022 to allow sufficient time to evaluate current market conditions and perform site availability analysis.

Due to the current real estate market conditions, additional time is needed to identify and evaluate sites that would meet established land requirements, infrastructure needs, environmental and financial constraints. Once two (2) sites meeting above criteria are identified, further environmental analysis will be necessary to advance project to the acquisition and design and construction phase.

The RFP included two optional tasks that required additional Board authorization. The first optional task is to prepare Federal Transit Administration (FTA) environmental documentation that meets National Environmental Policy Act (NEPA) regulations and guidance. The second optional task is to conduct topographic, boundary and utility surveys of the potential sites and draft a geotechnical report documents soil conditions and an assessment of the needs to prepare each site. To minimize future project delays, in addition to contract extension, staff is requesting authorization for completion of optional tasks, resulting in the increase of the not to exceed amount by $451,721.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal of 2% is accessed for this procurement. LYNX's procurement policy requires contractors to use a good faith effort to subcontract portions of their work for material, supplies and services to Disadvantaged Business Enterprise (DBE) Firms.

FISCAL IMPACT:

The FY2023 Proposed Capital Budget includes $588,050 for a site suitability evaluation and site evaluations including NEPA, Geotech & Categorical Exclusion. This project will be funded 100% with Federal grants.

Consent Agenda Item #5.B. ii

To: **LYNX Finance & Audit Committee**

From: **Terri Setterington**
Director Of Human Resources
Terri Setterington
(Technical Contact)

Phone: **407.841.2279 ext: 6106**

Item Name: **Authorization to Extend Contract with Akerman, LLP for Legal Services - General Counsel**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to extend the term of Contract #20-C28 for Legal Services - General Counsel provided by Akerman, LLP for one year and increase the not to exceed to $1,150,000.

BACKGROUND:

On December 5, 2019, staff received authorization to execute Contract #20-C28 with Akerman, LLP for Legal Services – General Counsel in the amount of $450,000. The term of the agreement was for two years. Since the initial award of the contract, the Board approved additional monies on June 24, 2021 increasing the not to exceed to $550,000. This was to address additional work required of Akerman on a variety of general counsel legal matters, including the litigation defense of LYNX to support the enforcement of the Transportation Security Administration (TSA) Security Directive for the enforcement of mandating masks on public transportation. On October 28, 2021, staff received authorization to exercise the first option year of Contract #20-C28 increasing the not to exceed amount to $850,000.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

This contract is to be funded with operational dollars, therefore no specific DBE goal is applicable.

FISCAL IMPACT:

The Proposed FY2023 Operating Budget includes $300,000 for general counsel legal expense.

Consent Agenda Item #5.C. i

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
Prahallad Vijayvargiya
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization to Solicit FY 2023-2024 Project Applications for the Federal Transit Administration (FTA), Section 5310 Program: Enhanced Mobility of Seniors and Individuals with Disabilities**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to conduct the competitive process to select projects and sub-recipients for the Federal Transit Administration (FTA) Enhanced Mobility of Seniors and Individuals with Disabilities, Section 5310 Program.

BACKGROUND:

The Governor of the State of Florida appointed LYNX as the designated recipient for Section 5310 funds, under MAP-21 (continues under the Infrastructure Investment and Jobs Act aka "IIJ" Act), for the Census defined urbanized portion of Orlando and Kissimmee. As the designated recipient of 5310 funds for the urbanized areas of Orlando and Kissimmee, Florida, LYNX has the responsibility to develop a program of projects, including soliciting projects from non-profit organizations and other eligible entities under Section 5310 that serve seniors and individuals with disabilities. The Section 5310 program is intended to enhance mobility for seniors and persons with disabilities by providing funds for programs to serve the special needs of transit-dependent populations beyond traditional public transportation services and Americans with Disabilities Act (ADA) complementary paratransit services.

Eligible activities under IIJ Act include:

1. Public transportation projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable.
2. Public transportation projects that exceed the requirements of the ADA.

3. Public transportation projects that improve access to fixed-route service and decrease reliance by individuals with disabilities on complementary paratransit.
4. Alternatives to public transportation that assist seniors and individuals with disabilities.

LYNX Mobility Management completed the Transportation Disadvantaged Service Plan (TDSP) with minor updates for FY 2022, a requirement by the State of Florida Commission for the Transportation Disadvantaged (CTD) and was approved by MetroPlan Orlando's Local Coordinating Board (LCB) on May 12, 2022. Included in the TDSP is the 5310 locally developed and coordinated public transit-human services transportation plan for FTA's Section 5310.

LYNX staff intends to competitively solicit project applications from non-profit organizations and other 5310 eligible entities to select sub-recipients. LYNX has successfully worked with non-profit agencies that have current coordination agreements to strive towards a common goal of providing cost-effective and efficient transportation services for seniors and individuals with disabilities. The 5310 trips provided directly by human service agencies to their respective clients are cost effective and reduces the need to provide paratransit trips to eligible riders.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE goal is not applicable to this activity.

FISCAL IMPACT:

LYNX staff will include the Section 5310 project award in future operating and capital budgets as appropriate.

Consent Agenda Item #5.C. ii

To: **LYNX Finance & Audit Committee**

From: **James Boyle**
Director Of Planning And Development
Bruce Detweiler
(Technical Contact)

Phone: **407.841.2279 ext: 6036**

Item Name: **Authorization to Initiate Public Outreach for Fiscal Year 2023 Proposed Service Changes**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to initiate the public outreach and participation process for the proposed service changes scheduled to occur in Fiscal Year 2023.

BACKGROUND:

Three times per year, LYNX conducts service changes. LYNX proactively informs and involves the Central Florida community in the planning and implementation of LYNX's new services, routing adjustments, passenger fare adjustments, new facility construction, capital projects, and planning activities in accordance with Federal and State regulations. In Fiscal Year 2023, these service changes are tentatively scheduled to occur in December, April and August.

The LYNX Public Participation Program includes utilizing a continuous communication program with various outreach techniques appropriate to both the proposed action and the affected public. LYNX staff members inform customers and members of the public of proposed changes through the LYNX website, social media, newspaper advertisements, posted flyers, as well as public meetings and workshops.

LYNX's Public Participation Program mandates public notice and public hearings for any service reductions impacting more than 25% percent of an individual route's total revenue hours or revenue miles and any proposed route eliminations. The exception to this reduction of service threshold are routes that have existed less than two years or have been introduced as service development or experimental service.

Public notices and public hearings are also required for any proposed alternatives that have the potential to create a disparate impact or disproportionate burden of plus or minus 10% percent, if implemented, on minority or lower income populations in LYNX's service area.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

All proposed service changes are expected to be budget neutral and will be supported with funds included in the FY2023 Proposed Operating Budget.

Consent Agenda Item #5.C. iii

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
John Burkholder
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization for LYNX Insurance Broker to Negotiate and Bind Coverage for the PGIT Package Renewal, Standalone Public Officials and Standalone Cyber Liability**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or her designee to negotiate and bind coverage and premium for the renewal of its Liability (General, Public Officials with Employment Practices, and Cyber), Crime, Auto Physical Damage, and Road Ranger (Liability and Physical Damage) policies with the assistance of Arthur J. Gallagher, Broker. The annual premium is $618,185.

BACKGROUND:

At the Board of Director's meetings on September 23, 2021, the Board of Director's authorized the Chief Executive Officer (CEO) to negotiate and bind coverage and premiums for these coverages. This was executed for one year, beginning October 1, 2021 through October 1, 2022.

Premiums	2022	2023	Change	% Change
General Liability	$71,883	$91,037	$19,154	27%
Crime	$1,293	$1,481	$188	15%
Cyber	$38,095	$39,674	$1,579	4%
Public Officials with Employment Practices Liability	$58,369	$64,491	$6,122	10%
Auto Physical Damage	$351,837	$363,513	$11,676	3%
Road Ranger Auto Liability	$52,659	$46,013	($6,646)	-13%
Road Ranger Auto Physical Damage	$27,280	$12,326	($14,954)	-55%
TOTAL	**$601,416**	**$618,535**	**$17,119**	**3%**

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

The FY2023 Proposed Operating Budget includes $1,030,099 for insurance expense. There are several policies that renew in April and the remaining budget will cover those anticipated premiums.

Consent Agenda Item #5.C. iv

To: **LYNX Finance & Audit Committee**

From: **Norman Hickling**
Director Of Mobility Services
Selita Stubbs
(Technical Contact)

Phone: **407.841.2279 ext: 6169**

Item Name: **Authorization to Execute Transportation Disadvantaged Coordination Contract between Central Florida Regional Transportation Authority, d/b/a LYNX, and Human Service Agencies for FY2023**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO), those designated by the CEO, and members of the Mobility Services Department be authorized to enter into Transportation Disadvantaged Coordination Contracts with human services agencies, local public bodies, non-profit agencies and other eligible providers pursuant to the LYNX Transportation Disadvantaged Service Plan (TDSP).

BACKGROUND:

The Central Florida Regional Transportation Authority, dba LYNX serves as the Community Transportation Coordinator (CTC) for Orange, Osceola, and Seminole Counties. As referenced in the TDSP, LYNX has the responsibility to coordinate transportation through human service agencies with available resources to assist in providing direct transportation to the disadvantaged community within the tri-county service area. Transportation Disadvantaged Coordination Contracts are provided to these agencies as evidence of their participation in the coordinated system which allows them to directly invoice state and federal funding sources for transportation services, when authorized by and in full compliance with state and federal funding source.

Coordinated Agencies:

Aspire Health Partners, Inc.	Pachot Group Home
Crystal Lake Supportive Environments Inc. (Attain Inc.)	Primrose Center, Inc.
Central Florida Group Homes, LLC	Life Concepts, Inc. - Quest Inc.
Elquanah Group Homes Inc.	Seniors First Inc.
National Mentor Healthcare -- (Florida Mentor)	The Opportunity Center, Inc.
Good Samaritan Society - Kissimmee Village	Osceola Council On Aging
Meals on Wheels, Etc.	Special Hearts Farm, Inc
Osceola Mental Health Inc. Dba Park Place Behavioral Health Care	

Note: Upon re-implementation of the LYNX directly funded 5310 Vanpool Program via the Grants Department, additional agencies may be added throughout the fiscal year.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

The Transportation Disadvantaged Coordination Contracts have no monetary value and there is no fiscal impact to the Authority.

Consent Agenda Item #5.C. v

To: **LYNX Finance & Audit Committee**

From: **Terri Setterington**
Director Of Human Resources
Brian Anderson
(Technical Contact)

Phone: **407.841.2279 ext: 6106**

Item Name: **Authorization to Amend and Restate the Governing Documents for the LYNX Defined Contribution Plan for BU Employee and Trust**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is seeking the Board of Directors' ratification of the interim Chief Executive Officer or her designee's waiver of collective bargaining, and the Board of Directors' adoption of Resolution No. 22-006 ("Resolution") to approve the amendment and restatement of the governing documents for the LYNX Defined Contribution Plan for BU Employees and Trust.

BACKGROUND:

Description of Plan: The LYNX Defined Contribution Plan for BU Employees ("Plan") was implemented effective March 1, 2014 to provide tax-qualified, defined contribution retirement benefits for employees represented by the Amalgamated Transit Union AFL-CIO Local 1596 ("Union") who do not participate in the closed defined benefit pension plan.

CBA Provisions Concerning the Plan: Article 30, section 5 of the current Labor Agreement (October 1, 2020 through September 30, 2023) between LYNX and the Union states, in pertinent part, "Any changes to the . . . Plan after its implementation shall be negotiated by the parties."

Purpose of the Restatement Documents: From time to time it is necessary or desirable to amend and restate the technical written terms of the Plan to maintain or confirm the tax-qualified status of the Plan under federal tax law and to reflect all current Plan terms in operation.

There is no IRS opinion letter in force concerning the acceptability, under federal tax law, of the Plan's governing documents, as the last IRS letter that was issued for the Plan has expired.

The Plan's new service provider, Voya Retirement Insurance and Annuity Company ("Voya"), offers a Non-Standardized Governmental 401(a) Pre-Approved Plan Basic Plan Document #01 and Adoption Agreement (together, the "Pre-Approved Plan Document"). Voya has obtained a current opinion letter from the IRS, during the IRS's third six-year approval cycle for plan document providers, that favorably opines on the acceptability, under federal tax law, of the Pre-Approved Plan Document for use by employers for the benefit of their plans and the employees who participate in them.

Fiduciary Review and Recommendation of the Restatement Documents: The Plan's Board of Trustees and Administrative Committee each have fiduciary administrative responsibilities with respect to the Plan and have reviewed and recommended that the Plan be amended and restated, effective retroactive to January 1, 2022, on the Pre-Approved Plan Document in the form attached within composite Exhibit "A" to the Resolution, to maintain and confirm the tax-qualified status of the Plan and to reflect all current Plan terms in operation.

The Pre-Approved Plan Document provides for the adoption of a supplemental written document to specify the responsibilities of each administrative body for the Plan when there are multiple parties with fiduciary administrative responsibilities. The Plan's Board of Trustees and Administrative Committee have reviewed the Allocation and Delegation of Responsibilities document in the form attached within composite Exhibit "A" to the Resolution ("Responsibilities Document"), concerning their respective fiduciary administrative responsibilities for the Plan. The Plan's Board of Trustees and Administrative Committee have recommended that the Responsibilities Document be adopted, effective retroactive to January 1, 2022, to reflect the current administrative practices in operation.

In connection with the amendment and restatement of the Plan, the Plan's Board of Trustees has reviewed and recommended that the Agreement and Declaration of Trust for the LYNX Defined Contribution Trust for BU Employees in the form attached as Exhibit "B" to the Resolution ("Restated Trust"), be amended and restated, effective retroactive to January 1, 2022.

The Pre-Approved Plan Document, the Responsibilities Document, and the Restated Trust are collectively referred to herein as the "Restatement Documents."

Collective Bargaining Waivers: During the course of this matter, LYNX's benefits counsel consulted with the Union's counsel, who reviewed the Restatement Documents and provided a written statement of the Union's waiver of collective bargaining over the Restatement Documents. LYNX's labor counsel, as designee of the interim Chief Executive Officer, also provided a written statement of waiver of collective bargaining over the Restatement Documents.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

There is no change to the Plan's benefits or costs in the Restatement Documents, and therefore there will be no fiscal impact as a result of adopting the Restatement Documents.

CFRTA RESOLUTION NO. 22-006

RESOLUTION OF THE CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY (d/b/a/ LYNX) TO AMEND AND RESTATE THE GOVERNING DOCUMENTS FOR THE LYNX DEFINED CONTRIBUTION PLAN FOR BU EMPLOYEES AND TRUST

WHEREAS, LYNX, as the sponsoring employer, previously established the LYNX Defined Contribution Plan for BU Employees ("Plan") effective March 1, 2014, last amended and restated the Plan's governing documents effective January 1, 2016, and subsequently amended the Plan effective April 26, 2020; and

WHEREAS, LYNX has the right to further amend the Plan's governing documents, provided that any amendment that is specifically governed by the terms of an applicable collective bargaining agreement must be compliance therewith; and

WHEREAS, from time to time it is necessary or desirable to amend and restate the technical terms of the Plan to maintain or confirm the tax-qualified status of the Plan under federal tax law and to reflect all current Plan terms; and

WHEREAS, the Plan's new service provider, Voya Retirement Insurance and Annuity Company ("Voya"), offers a Non-Standardized Governmental 401(a) Pre-Approved Plan Basic Plan Document #01 and Adoption Agreement (together, the "Pre-Approved Plan Document"), which may be used to amend and restate the terms of the Plan; and

WHEREAS, Voya has obtained an opinion letter from the United States Internal Revenue Service that favorably opines on the acceptability, under federal tax law, of the Pre-Approved Plan Document for use by governmental employers for the benefit of their plans and the employees who participate in them; and

WHEREAS, the Pre-Approved Plan Document provides for the adoption of a supplemental written document to specify the responsibilities of each administrative body for a plan when there are multiple parties with fiduciary administrative responsibilities; and

WHEREAS, the Plan' Board of Trustees and Administrative Committee each have fiduciary administrative responsibilities for the Plan; and

WHEREAS, the Plan's Board of Trustees and Administrative Committee have recommended that the Plan be amended and restated on the Pre-Approved Plan Document in the form attached hereto within composite Exhibit "A" to maintain and confirm the tax-qualified status of the Plan and to reflect all current Plan terms; and

WHEREAS, the Plan's Board of Trustees and Administrative Committee have recommended that the Allocation and Delegation of Responsibilities document describing their respective fiduciary administrative responsibilities for the Plan, in the form attached hereto within composite Exhibit "A", be adopted, effective retroactive to January 1, 2022, to reflect the current administrative practices for the Plan; and

WHEREAS, in connection with the amendment and restatement of the Plan, the Plan's Board of Trustees has recommended that the Agreement and Declaration of Trust for the LYNX Defined Contribution Trust for BU Employees in the form attached hereto as Exhibit "B", be adopted, effective retroactive to January 1, 2022; and

WHEREAS, LYNX wishes to amend and restate the Plan on the Pre-Approved Plan Document in the form attached hereto within composite Exhibit "A" to maintain and confirm the tax-qualified status of the Plan and to reflect all current Plan terms; and

WHEREAS, LYNX wishes to adopt the Allocation and Delegation of Responsibilities document describing the respective fiduciary administrative responsibilities of the Plan's Board of Trustees and Administrative Committee, in the form attached hereto within composite Exhibit "A", to reflect the current administrative practices for the Plan; and

WHEREAS, LYNX wishes to amend and restate the Agreement and Declaration of Trust for the LYNX Defined Contribution Trust for BU Employees in the form attached hereto as Exhibit "B".

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The amendment and restatement of the LYNX Defined Contribution Plan for BU Employees contained in the Non-Standardized Governmental 401(a) Pre-Approved Plan Basic Plan Document #01 and Adoption Agreement attached hereto within composite Exhibit "A" is hereby approved and adopted, effective retroactive to January 1, 2022.

2. The Allocation and Delegation of Responsibilities document attached hereto within composite Exhibit "A" is hereby approved and adopted, effective retroactive to January 1, 2022.

3. The amended and restated Agreement and Declaration of Trust for the LYNX Defined Contribution Trust for BU Employees in the form attached hereto as Exhibit "B" is hereby approved and adopted, effective retroactive to January 1, 2022.

4. The interim LYNX CEO is hereby authorized to execute the Non-Standardized Governmental 401(a) Pre-Approved Plan Basic Plan Document #01 and Adoption Agreement attached hereto within composite Exhibit "A", for and on behalf of LYNX.

5. The interim LYNX CEO is hereby authorized to execute the Allocation and Delegation of Responsibilities document attached hereto within composite Exhibit "A", for and on behalf of LYNX.

6. The interim LYNX CEO is hereby authorized to execute the Agreement and Declaration of Trust for the LYNX Defined Contribution Trust for BU Employees in the form attached hereto as Exhibit "B", for and on behalf of LYNX.

7. The interim LYNX CEO, with such assistance as she may require from the Plan's Administrative Committee, the Plan's Board of Trustees, and/or LYNX Human Resources, Finance, or Accounting personnel, is authorized and directed to take all other action as she determines necessary or desirable to effectuate these resolutions.

8. Any and all actions heretofore or hereinafter taken by the Plan's Administrative Committee, the Plan's Board of Trustees, the interim LYNX CEO, and/or LYNX Human Resources, Finance, or Accounting personnel in connection with any and all of the matters addressed in these resolutions are hereby confirmed and ratified as properly authorized acts of LYNX.

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CFRTA RESOLUTION NO. 22-006

RESOLUTION OF THE CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY (d/b/a/ LYNX) TO AMEND AND RESTATE THE GOVERNING DOCUMENTS FOR THE LYNX DEFINED CONTRIBUTION PLAN FOR BU EMPLOYEES AND TRUST

APPROVED AND ADOPTED this ____ day of ______________, 2022 by the Governing Board of the Central Florida Regional Transportation Authority.

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By: Governing Board

____
Chairman

ATTEST:

____
Secretary

ADOPTION AGREEMENT FOR
VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY
NON-STANDARDIZED
GOVERNMENTAL 401(a) PRE-APPROVED PLAN

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION
(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: Central Florida Regional Transportation Authority d/b/a LYNX

Address: 2500 Lynx Lane
Street

Orlando (City) Florida (State) 32804 (Zip)

Telephone: (407) 254-6219

Taxpayer Identification Number (TIN): 59-2982959

Employer's Fiscal Year ends: September 30

2. TYPE OF GOVERNMENTAL ENTITY. This Plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.
a. [X] State government or state agency
b. [ ] County or county agency
c. [ ] Municipality or municipal agency
d. [ ] Indian tribal government (see Note below)

NOTE: An Indian tribal government may only adopt this Plan if such entity is defined under Code §7701(a)(40), is a subdivision of an Indian tribal government as determined in accordance with Code §7871(d), or is an agency or instrumentality of either, and all of the Participants under this Plan employed by such entity substantially perform services as an Employee in essential governmental functions and not in the performance of commercial activities (whether or not an essential government function).

3. PARTICIPATING EMPLOYERS (Plan Section 1.39). Will any other Employers adopt this Plan as Participating Employers?
a. [X] No
b. [ ] Yes

MULTIPLE EMPLOYER PLAN (Plan Article XI). Will any Employers who are not Affiliated Employers adopt this Plan as part of a multiple employer plan (MEP) arrangement?
c. [X] No
d. [ ] Yes (Complete a Participation Agreement for each Participating Employer.)

PLAN INFORMATION
(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Question 9.)

4. PLAN NAME:

LYNX Defined Contribution Plan for BU Employees

5. PLAN STATUS
a. [ ] New Plan
b. [X] Amendment and restatement of existing Plan
CYCLE 3 RESTATEMENT (leave blank if not applicable)
1. [X] This is an amendment and restatement to bring a plan into compliance with the legislative and regulatory changes set forth in IRS Notice 2017-37 (i.e., the 6-year pre-approved plan restatement cycle).

6. EFFECTIVE DATE (Plan Section 1.16) (complete a. if new plan; complete a. AND b. if an amendment and restatement)
Initial Effective Date of Plan (except for restatements, cannot be earlier than the first day of the current Plan Year)
a. March 1, 2014 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below)

Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

b. January 1, 2022 (enter month day, year; NOTE: The restatement date may not be prior to the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

7. PLAN YEAR (Plan Section 1.43) means, except as otherwise provided in d. below:
a. [X] the calendar year
b. [ ] the twelve-month period ending on ____________ (e.g., June 30th)

SHORT PLAN YEAR (Plan Section 1.47). This is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 14):
c. [X] N/A
d. [ ] beginning on ________________________ (enter month day, year; e.g., July 1, 2020)
and ending on ________________________ (enter month day, year).

8. VALUATION DATE (Plan Section 1.53) means:
a. [X] every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
b. [ ] the last day of each Plan Year
c. [ ] the last day of each Plan Year quarter
d. [ ] other (specify day or days): ________________________________ (must be at least once each Plan Year)

NOTE: The Plan always permits interim valuations.

9. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER
(If none is named, the Employer will be the Administrator (Plan Section 1.2).)
a. [ ] Employer (use Employer address and telephone number)
b. [ ] The Committee appointed by the Employer (use Employer address and telephone number)
c. [X] Other:

Name: Board of Trustees (named fiduciary) appointed by the Employer and Union, and Administrative Committee (functional fiduciary) appointed by the Employer

Address: 2500 Lynx Lane
Street

Orlando (City) Florida (State) 32804 (Zip)

Telephone: (407) 254-6219

10. TYPE OF PLAN (select one)
a. [ ] Profit Sharing Plan.
b [X] Money Purchase Pension Plan.

11. CONTRIBUTION TYPES
The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.
FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)
a. [ ] This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):
1. [ ] All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select prior contributions at g. - j. (optional), skip questions 12-18 and 22-30)
2. [ ] All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - f.)

Effective date
3. [ ] as of ________________________________ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CURRENT CONTRIBUTIONS
The Plan permits the following contributions (select one or more):
b. [X] **Employer contributions other than matching** (Questions 24-25)
1. [ ] This Plan qualifies as a Social Security Replacement Plan (Question 24.e. must be selected)
c. [X] **Employer matching contributions** (Questions 26-28)

d. [ ] **Mandatory Employee contributions** (Question 30)
e. [ ] **After-tax voluntary Employee contributions**
f. [X] **Rollover contributions** (Question 36)

PRIOR CONTRIBUTIONS
The Plan used to permit, but no longer does, the following contributions (choose all that apply, if any):
g. [ ] **Employer matching contributions**
h. [ ] **Employer contributions other than matching contributions**
i. [ ] **Rollover contributions**
j. [ ] **After-tax voluntary Employee contributions**

ELIGIBILITY REQUIREMENTS

12. ELIGIBLE EMPLOYEES (Plan Section 1.17) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan: (select a. or b.)
a. [ ] **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 13).
b. [X] **Exclusions.** The following Employees are not Eligible Employees for Plan purposes (select one or more):
   1. [ ] Union Employees (as defined in Plan Section 1.17)
   2. [ ] Nonresident aliens (as defined in Plan Section 1.17)
   3. [ ] Leased Employees (Plan Section 1.29)
   4. [ ] Part-time Employees. A part-time Employee is an Employee whose regularly scheduled service is less than __ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.55).
   5. [ ] Temporary Employees. A temporary Employee is an Employee who is categorized as a temporary Employee on the Employer's payroll records.
   6. [ ] Seasonal Employees. A seasonal Employee is an Employee who is categorized as a seasonal Employee on the Employer's payroll records.
   7. [X] Other: Exclude all Employees except those who are a member of the Amalgamated Transit Union Local 1596, AFL-CIO, CLC ("Union") collective bargaining unit, hired on or after March 1, 2014. A person shall continue as an Eligible Employee eligible to participate in allocations of Employer contributions (matching and non-matching) only so long as the person is employed in a position covered by the collective bargaining agreement between the Employer and the Union ("CBA"). A person who was employed by the Employer in a position not covered by the CBA who is subsequently transferred to or employed in a position covered by the CBA shall become an Eligible Employee as of the date of such transfer or employment. (must be definitely determinable under Regulation §1.401-1(b). Exclusions may be employment title specific but may not be by individual name)

NOTE: If option 4. - 6. (part-time, temporary and/or seasonal exclusions) is selected, when any such excluded Employee actually completes 1 Year of Service, then such Employee will no longer be part of this excluded class. For this purpose, the Hours of Service method will be used for the 1 Year of Service override regardless of any contrary selection at Question 16.

13. CONDITIONS OF ELIGIBILITY (Plan Section 3.1)
a. [X] **No age and service required.** No age and service required for all Contribution Types (skip to Question 14).
b. [ ] **Eligibility.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (complete c. and d., select e. and f. if applicable):

Eligibility Requirements
c. [ ] **Age Requirement**
   1. [ ] No age requirement
   2. [ ] Age 20 1/2
   3. [ ] Age 21
   4. [ ] Age ______ (may not exceed 26)

d. [ ] **Service Requirement**
   1. [ ] No service requirement
   2. [ ] ______ (not to exceed 60) months of service (elapsed time)
   3. [ ] 1 Year of Service
   4. [ ] _______ (not to exceed 5) Years of Service
   5. [ ] ______ consecutive month period from the Eligible Employee's employment commencement date and during which at least _______ Hours of Service are completed.
   6. [ ] ______ consecutive months of employment.
   7. [ ] Other: ________________________________ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)

NOTE: If c.4. or d.7. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 26 and may not exceed 5 Years of Service.
NOTE: Year of Service means Period of Service if the elapsed time method is chosen.

Waiver of conditions. The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

e. [ ] If employed on ______________ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless 3. selected below. Such Employees will enter the Plan as of such date (select 1. and/or 2. AND 3. if applicable):
   1. [ ] service requirement (may let part-time Eligible Employees into the Plan)
   2. [ ] age requirement
   3. [ ] waiver is for: ______________________________

Amendment or restatement to change eligibility requirements

f. [ ] This amendment or restatement (or a prior amendment and restatement) modified the eligibility requirements and the prior eligibility conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility conditions set forth above.
   1. [ ] The eligibility conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
   2. [ ] The eligibility conditions above only apply to individuals who were hired on or after the effective date of the modification.

14. EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)

An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of the:

a. [X] date such requirements are met
b. [ ] first day of the month coinciding with or next following the date on which such requirements are met
c. [ ] first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met
d. [ ] earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met
e. [ ] first day of the Plan Year coinciding with or next following the date on which such requirements are met
f. [ ] first day of the Plan Year in which such requirements are met
g. [ ] first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.
h. [ ] other: ________________________________ (must be definitely determinable)

SERVICE

15. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.40 and 1.55)

a. [X] No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 16).
b. [ ] Service with the designated employers is recognized as follows (select c. – e. and one or more of columns 1. - 3.; chose other options as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option h. under Section B of Appendix A):

Other Employer	1. Eligibility	2. Vesting	3. Contribution Allocation
c. [ ] Employer name: ______________________	[ ]	[ ]	[ ]
d. [ ] Employer name: ______________________	[ ]	[ ]	[ ]
e. [ ] Employer name: ______________________	[ ]	[ ]	[ ]
Limitations			
f. [ ] The following provisions or limitations apply with respect to the recognition of prior service: ______________________ (e.g., credit service with X only on/following 1/1/19)	[ ]	[ ]	[ ]

g. [ ] The following provisions or limitations apply with respect to the recognition of service with other employers: ________ (e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.40 and 1.55 regardless of any selections above.

16. SERVICE CREDITING METHOD (Plan Sections 1.40 and 1.55)

NOTE: If any Plan provision is based on a Year of Service, then the provisions set forth in the definition of Year of Service in Plan Section 1.55 will apply, including the following defaults, except as otherwise elected below:
1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.
2. Hours of Service (Plan Section 1.24) will be based on actual Hours of Service except that for Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees), the monthly equivalency will be used.
3. For eligibility purposes, the computation period will be as defined in Plan Section 1.55 (i.e., shift to the Plan Year if the eligibility condition is one (1) Year of Service or less).
4. For vesting, allocation, and distribution purposes, the computation period will be the Plan Year.
5. Upon an Employee's rehire, all prior service with the Employer is taken into account for all purposes.

a. [ ] **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:
 1. [ ] all purposes (skip to Question 17)
 2. [ ] the following purposes (select one or more):
  a. [ ] eligibility to participate
  b. [ ] vesting
  c. [ ] allocations, distributions and contributions

b. [ ] **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):
 1. [ ] **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service
 2. [ ] **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
 3. [ ] **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
  a. [ ] all purposes
  b. [ ] the following purposes (select one or more):
   1. [ ] eligibility to participate
   2. [ ] vesting
   3. [ ] allocations, distribution and contributions

  Such method will apply to:
  c. [ ] all Employees
  d. [ ] Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
  e. [ ] other: ______________________________ (e.g., per-diem Employees only)

  Hours of Service will be determined on the basis of:
  f. [ ] days worked (10 hours per day)
  g. [ ] weeks worked (45 hours per week)
  h. [ ] semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
  i. [ ] months worked (190 hours per month)
  j. [ ] bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
  k. [ ] other: ______________________________ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees).

 4. [ ] **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least ______ (not to exceed 1,000) Hours of Service for:
  a. [ ] all purposes
  b. [ ] the following purposes (select one or more):
   1. [ ] eligibility to participate
   2. [ ] vesting
   3. [ ] allocations, distributions and contributions

c. [ ] **Alternative for counting all prior service.** Instead of the default which recognizes all prior service for rehired Employees, the Plan will not recognize prior service and rehired Employee are treated as new hires for the following purposes: (select one)
   1. [ ] all purposes
   2. [ ] the following purposes (select one or more):
      a. [ ] eligibility to participate
      b. [ ] vesting
      c. [ ] sharing in allocations or contributions

d. [X] **Other service crediting provisions:** Notwithstanding the last sentence of the first paragraph of Plan Section 1.17(c): If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then all of the Participant's Hours of Service for both types of service performed in a computation period are credited for purposes of determining whether the Participant has completed a Year of Service for that computation period. With respect to contiguous employment, a Participant is credited with Hours of Service for services performed as a non-collectively bargained Employee if the Participant performed services as a collectively bargained Employee immediately before or immediately after performing services as a non-collectively bargained Employee and further provided that no quit, discharge, or retirement occurred between performing services as a non-collectively bargained Employee and performing services as a collectively bargained Employee ______ (must be definitely determinable; e.g., for vesting a Year of Service is based on 1,000 Hours of Service but for eligibility a Year of Service is based on 900 Hours of Service.)

NOTE: Must not list more than 1,000 hours in this Section. This servicing credit provision will be used for:
   1. [ ] All purposes
   2. [X] The following purposes (select one or more):
      a. [ ] eligibility to participate
      b. [X] vesting
      c. [ ] allocations, distributions and contributions

VESTING

17. VESTING OF PARTICIPANT'S INTEREST – EMPLOYER CONTRIBUTIONS (Plan Section 6.4(b))

a. [ ] N/A (no Employer contributions; skip to Question 19)

b. [X] The vesting provisions selected below apply. Section B of Appendix A can be used to specify any exceptions to the provisions below.

NOTE: The Plan provides that contributions for converted sick leave and/or vacation leave are fully Vested.

Vesting for Employer contributions other than matching contributions

c. [ ] N/A (no Employer contributions (other than matching contributions); skip to f.)

d. [ ] 100% vesting. Participants are 100% Vested in Employer contributions (other than matching contributions) upon entering Plan.

e. [X] The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer contributions (other than matching contributions):
   1. [ ] 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
   2. [ ] 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
   3. [ ] 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
   4. [X] Cliff: 100% vesting after _5_ (not to exceed 15) years
   5. [ ] Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%

Vesting for Employer matching contributions

f. [ ] N/A (no Employer matching contributions)

g. [ ] The schedule above will also apply to Employer matching contributions.

h. [ ] 100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan.

i. [X] The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
   1. [ ] 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
   2. [ ] 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
   3. [ ] 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
   4. [X] Cliff: 100% vesting after _5_ (not to exceed 15) years
   5. [ ] Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%

NOTE: If any Part-time/Seasonal/Temporary Employees who are not covered under Social Security are participating in this Plan as a Social Security Replacement Plan, any contributions used to satisfy the minimum contribution requirements of Question 24.e. will be 100% vested.

18. VESTING OPTIONS

Excluded vesting service. The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

a. [ ] Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
b. [ ] Service prior to the computation period in which an Employee has attained age _______.
c. [ ] Service during a period for which an Employee did not make mandatory Employee contributions.

Vesting for death, Total And Permanent Disability and Early/Normal Retirement. Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

d. [X] Death
e. [X] Total and Permanent Disability
f. [ ] Early Retirement Date
g. [X] Normal Retirement Age

RETIREMENT AGES

19. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.33) means:

This Question 19 and Question 20 may be skipped if the Plan does not base any benefits, distributions or other features on Normal Retirement Age.

a. [ ] **Specific age.** The date a Participant attains age ______
b. [X] **Age/participation.** The later of the date a Participant attains age _62_ or the _5th_ anniversary of the first day of the Plan Year in which participation in the Plan commenced
c. [ ] Other: __________________ (must be definitely determinable)

NOTE: If this is a Money Purchase Pension Plan and in-service distributions at Normal Retirement Age are permitted, then the Normal Retirement Age cannot be less than age 62, or age 50 if substantially all Participants are qualified public safety employees (as defined in Code §72(t)(1)). The "substantially all" requirement for qualified public safety employees will no longer be a requirement as of the effective date of the final regulations once they are issued & effective. If an age less than 62 is inserted (unless the age 50 safe harbor is applicable for a qualified public safety employee), no reliance will be afforded on the Opinion Letter issued to the Plan that such age is reasonably representative of the typical retirement age for the industry in which the Participants works. Effective for Employees hired during Plan Years beginning on or after the later of (1) January 1, 2015, or (2) the close of the first legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three (3) months after the final regulations are published in the Federal Register, an NRA of less than age 62 must comply with the final regulations under §401(a).

Qualified public safety employees. Normal Retirement Age for public safety employees (as defined in Code §72(t)(1)) (leave blank if not applicable)

d. [ ] Age ______ (may not be less than 50 for a Money Purchase Pension Plan or 40 for a Profit Sharing Plan)

20. NORMAL RETIREMENT DATE (Plan Section 1.34) means, with respect to any Participant, the:
a. [X] date on which the Participant attains "NRA"
b. [ ] first day of the month coinciding with or next following the Participant's "NRA"
c. [ ] first day of the month nearest the Participant's "NRA"
d. [ ] Anniversary Date coinciding with or next following the Participant's "NRA"
e. [ ] Anniversary Date nearest the Participant's "NRA"
f. [ ] Other: _______________ (e.g., first day of the month following the Participant's "NRA").

21. EARLY RETIREMENT DATE (Plan Section 1.15)
a. [X] N/A (no early retirement provision provided)
b. [ ] Early Retirement Date means the:
   1. [ ] date on which a Participant satisfies the early retirement requirements
   2. [ ] first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
   3. [ ] Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements

   Early retirement requirements
   4. [ ] Participant attains age ______
   AND, completes.... (leave blank if not applicable)
      a. [ ] at least ______ Years (or Periods) of Service for vesting purposes
      b. [ ] at least ______ Years (or Periods) of Service for eligibility purposes
c. [ ] Early Retirement Date means: ____________________________ (must be definitely determinable)

COMPENSATION

22. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.10 and 1.23).
Base definition
a. [X] Wages, tips and other compensation on Form W-2
b. [ ] Code §3401(a) wages (wages for withholding purposes)
c. [ ] 415 safe harbor compensation

NOTE: Plan Section 1.10(c) provides that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457.

Determination period. Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option f. under Section B of Appendix A):
d. [X] the Plan Year
e. [ ] the Fiscal Year coinciding with or ending within the Plan Year
f. [ ] the calendar year coinciding with or ending within the Plan Year

Adjustments to Compensation (for Plan Section 1.10). Compensation will be adjusted by:
g. [X] **No adjustments** (skip to Question 23. below)
h. [ ] **Adjustments.** Compensation will be adjusted by (select all that apply):
   1. [ ] excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457)
   2. [ ] excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.
   3. [ ] excluding Compensation paid during the "determination period" while not a Participant in the Plan.
   4. [ ] excluding Military Differential Pay
   5. [ ] excluding overtime
   6. [ ] excluding bonuses
   7. [ ] other: ________________________ (e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

23. POST-SEVERANCE COMPENSATION (415 REGULATIONS)
415 Compensation (post-severance compensation adjustments) (select all that apply at a.; leave blank if none apply)

NOTE: Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.23), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

a. [ ] The defaults listed above apply except for the following (select one or more):
   1. [ ] Leave cash-outs will be **excluded**
   2. [ ] Nonqualified unfunded deferred compensation will be **excluded**
   3. [ ] Disability continuation payments will be **included** for all Participants and the salary continuation will continue for the following fixed or determinable period: ___________________
   4. [ ] Other: ___________________ (must be definitely determinable)

Plan Compensation (post-severance compensation adjustments)

b. [X] **Defaults apply.** Compensation will **include** (to the extent provided in Plan Section 1.10 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans. (skip to Question 24)

c. [ ] **Exclude all post-severance compensation.** Exclude all post-severance compensation for allocation purposes.

d. [ ] **Post-severance adjustments.** The defaults listed at b. apply except for the following (select one or more):
   1. [ ] Exclude all post-severance compensation
   2. [ ] Regular pay will be **excluded**
   3. [ ] Leave cash-outs will be **excluded**
   4. [ ] Nonqualified unfunded deferred compensation will be **excluded**
   5. [ ] Military Differential Pay will be **included**
   6. [ ] Disability continuation payments will be **included** for all Participants and the salary continuation will continue for the following fixed or determinable period: ____________________

e. [ ] Other: ____________________ (must be definitely determinable)

CONTRIBUTIONS AND ALLOCATIONS

24. EMPLOYER CONTRIBUTIONS (OTHER THAN MATCHING CONTRIBUTIONS) (Plan Section 4.1(b)(3)) (skip to Question 26 if Employer contributions are NOT selected at Question 11.b.)

CONTRIBUTION FORMULA (select one or more of the following contribution formulas:)

a. [ ] **Discretionary contribution (no groups).** (may not be elected if this Plan is a Money Purchase Pension Plan) The Employer may make a discretionary contribution, to be determined by the Employer. Any such contribution will be allocated to each Participant eligible to share in allocations in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.

b. [ ] **Discretionary contribution (Grouping method).** (may not be elected if this Plan is a Money Purchase Pension Plan) The Employer may designate a discretionary contribution to be made on behalf of each Participant group selected below (only select 1. or 2.). The groups must be clearly defined in a manner that will not violate the definite predetermined allocation formula requirement of Regulation §1.401-1(b)(1)(ii). The Employer must notify the Trustee in writing of the amount of the Employer Contribution being given to each group.
   1. [ ] Each Participant constitutes a separate classification.
   2. [ ] Participants will be divided into the following classifications with the allocation methods indicated under each classification.

   Definition of classifications. Define each classification and specify the method of allocating the contribution among members of each classification. Classifications specified below must be clearly defined in a manner that will not violate the definitely determinable allocation requirement of Regulation §1.401-1(b)(1)(ii).

   Classification A will consist of ____
   The allocation method will be: [ ] pro rata based on Compensation
   [ ] equal dollar amounts (per capita)

   Classification B will consist of ____
   The allocation method will be: [ ] pro rata based on Compensation
   [ ] equal dollar amounts (per capita)

   Classification C will consist of ____
   The allocation method will be: [ ] pro rata based on Compensation
   [ ] equal dollar amounts (per capita)

   Classification D will consist of ____
   The allocation method will be: [ ] pro rata based on Compensation
   [ ] equal dollar amounts (per capita)

   Additional Classifications: ____________________________________ (specify the classifications and which of the above allocation methods (pro rata or per capita) will be used for each classification).

   NOTE: If more than four (4) classifications, the additional classifications and allocation methods may be attached as an addendum to the Adoption Agreement or may be entered under Additional Classifications above.

   Determination of applicable group. If a Participant shifts from one classification to another during a Plan Year, then unless selected below, the Participant is in a classification based on the Participant's status as of the last day of the Plan Year, or if earlier, the date of termination of employment. If selected below, the Administrator will apportion the Participant's allocation during a Plan Year based on the following:

a. [ ] Beginning of Plan Year. The classification will be based on the Participant's status as of the beginning of the Plan Year.
b. [ ] Months in each classification. Pro rata based on the number of months the Participant spent in each classification.
c. [ ] Days in each classification. Pro rata based on the number of days the Participant spent in each classification.
d. [ ] One classification only. The Employer will direct the Administrator to place the Participant in only one classification for the entire Plan Year during which the shift occurs.

c. [X] **Fixed contribution** equal to (only select one):
1. [ ] ______% of each Participant's Compensation for each:
a. [ ] Plan Year
b. [ ] calendar quarter
c. [ ] month
d. [ ] pay period
e. [ ] week
2. [ ] $_______ per Participant.
3. [ ] $_______ per Hour of Service worked while an Eligible Employee
a. [ ] up to _______ hours (leave blank if no limit)
4. [X] other: The Employer will make a fixed nonelective contribution of six percent (6%) of each Eligible Employee's Compensation each pay period. (the formula described must satisfy the definitely determinable requirement under Regulation §1.401-1(b)) **NOTE**: Under Question 24.c.4., the Employer may only describe the allocation of Nonelective Contributions from the elections available under Question 24.c of this Adoption Agreement and/or a combination thereof as to a Participant group (e.g., a monthly contribution applies to Group A).

d. [ ] **Sick leave/vacation leave conversion.** The Employer will contribute an amount equal to an Employee's current hourly rate of pay multiplied by the Participant's number of unused accumulated sick leave and/or vacation days (as selected below). Only unpaid sick and vacation leave for which the Employee has no right to receive in cash may be included. In no event will the Employer's contribution for the Plan Year exceed the maximum contribution permitted under Code §415(c).

The following may be converted under the Plan: (select one or both):
1. [ ] Sick leave
2. [ ] Vacation leave

Eligible Employees. Only the following Participants shall receive the Employer contribution for sick leave and/or vacation leave (select 3. and/or 4; leave blank if no limitations provided, however, that this Plan may not be used to only provide benefits for terminated Employees)
3. [ ] **Former Employees.** All Employees terminating service with the Employer during the Plan Year and who have satisfied the eligibility requirements based on the terms of the Employer's accumulated benefits plans checked below (select all that apply; leave blank if no exclusions):
a. [ ] The Former Employee must be at least age _____ (e.g., 55)
b. [ ] The value of the sick and/or vacation leave must be at least $_____ (e.g., $2,000)
c. [ ] A contribution will only be made if the total hours is over _____ (e.g., 10) hours
d. [ ] A contribution will not be made for hours in excess of _____ (e.g., 40) hours
4. [ ] **Active Employees.** Active Employees who have not terminated service during the Plan Year and who meet the following requirements (select all that apply; leave blank if no exclusions):
a. [ ] The Employee must be at least age _____ (e.g., 55)
b. [ ] The value of the sick and/or vacation leave must be at least $_____ (e.g., $2,000)
c. [ ] A contribution will only be made if the total hours is over _____ (e.g., 10) hours
d. [ ] A contribution will not be made for hours in excess of _____ (e.g., 40) hours

e. [ ] **Social Security Replacement Plan.** Except as provided below, the Employer will contribute an amount equal to 7.5% of each eligible Participant's Compensation for the entire Plan Year, reduced by mandatory Employee contributions that are picked-up under Code §414(h) and Employer contributions to this Plan actually contributed to the Participant's Account during such Plan Year. (may only be selected if Question 11.b.1. has also been selected)
AND, only the following Employees will NOT be eligible for the Social Security Replacement Plan contribution: (select all that apply)
1. [ ] Part-time Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2. A part-time Employee is an Employee whose regularly scheduled service is less than _____ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.55).
2. [ ] Seasonal Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2. A seasonal Employee is an Employee who is categorized as a seasonal Employee on the Employer's payroll records.
3. [ ] Temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2. A temporary Employee is an Employee who is categorized as a temporary Employee on the Employer's payroll records.

4. [ ] Employees in elective positions (filled by an election, which may be by legislative body, board or committee, or by a jurisdiction's qualified electorate)
5. [ ] Other: ____________________________ (any other group of Employees that is definitely determinable and not eligible for the Social Security Replacement Plan contribution).

The minimum contribution of 7.5% stated above will be satisfied by:
a. [ ] the Employee only (specify the contribution at the mandatory Employee contributions Question 30)
b. [ ] the Employer only
c. [ ] both the Employee and the Employer. The Employee shall contribute the amount specified in Question 30 for mandatory Employee contributions) and the Employer shall contribute _____% of each eligible Participant's Compensation.

NOTE: If a. or c. above is selected, then the mandatory Employee contribution must be picked-up by the Employer at Question 30. Also, if b. or c. above is selected, then the allocation conditions in Question 25 below do not apply to the Employer contribution made pursuant to this provision.

f. [ ] Other: __________________________ (the formula described must satisfy the definitely determinable requirement under Regulation §1.401-1(b) and if this is a Money Purchase Pension, it must not be a discretionary contribution formula). **NOTE**: Under Question 24.f., the Employer may only describe the allocation of Nonelective Contributions from the elections available under Question 24 and/or a combination thereof as to a Participant group or contribution type (e.g., pro rata allocation applies to Group A; contributions to other Employees will be allocated in accordance with the classifications allocation provisions of Plan Section 4.3 with each Participant constituting a separate classification).

25. ALLOCATION CONDITIONS (Plan Section 4.3). If 24.a., b., c., or f. is selected above, indicate requirements to share in allocations of Employer contributions (select a. OR b. and all that apply at c. - e.)

a. [X] **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 26).

b. [ ] **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)

Conditions for Participants NOT employed on the last day of the Plan Year

1. [ ] A Participant must complete at least __________ (not to exceed 500) Hours of Service if the actual hours/equivalency method is selected (or at least ________ (not to exceed 3) months of service if the elapsed time method is selected).
2. [ ] A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
3. [ ] Participants will NOT share in the allocations, regardless of service.
4. [ ] Participants will share in the allocations, regardless of service.
5. [ ] Other: _________________________ (must be definitely determinable and not subject to Employer discretion)

Conditions for Participants employed on the last day of the Plan Year

6. [ ] No service requirement.
7. [ ] A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8. [ ] A Participant must complete at least ______ Hours of Service during the Plan Year.
9. [ ] Other: ___________________________ (must be definitely determinable and not subject to Employer discretion)

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. above is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

c. [ ] Death
d. [ ] Total and Permanent Disability
e. [ ] Termination of employment on or after Normal Retirement Age
   1. [ ] or Early Retirement Date

26. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 4.1(b)(2) and Plan Section 4.12). (skip to Question 29 if matching contributions are NOT selected at Question 11.c.) The Employer will (or may with respect to any discretionary contribution) make the following matching contributions:

A. **Employee contributions taken into account.** For purposes of applying the matching contribution provisions below, the following amounts are being matched (hereafter referred to as "matched Employee contributions" (select one or more):

a. [X] Elective deferrals to a **457 plan.** Enter Plan name(s): LYNX Deferred Compensation Plan

b. [ ] Elective deferrals to a **403(b) plan.** Enter Plan name(s): ___________________

c. [ ] Voluntary Employee Contributions

d. [ ] Other: ___________________ (specify amounts that are matched under this Plan and are provided for within this Adoption Agreement)

B. **Matching Formula.** (select one)

e. [ ] **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to _____% (e.g., 50) of the Participant's "matched Employee contributions"

1. [ ] that do not exceed _____% of a Participant's Compensation (leave blank if no limit)

Additional matching contribution (choose 2. if applicable):

2. [ ] plus an additional matching contribution of a discretionary percentage determined by the Employer,
   a. [ ] but not to exceed _____% of Compensation. Such contribution is subject to the Instructions and Notice requirement of Section 4.12.

f. [ ] **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's "matched Employee contributions", determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate $ or %)	Matching Percentage
First ______	______%
Next ______	______%
Next ______	______%
Next ______	______%

g. [ ] **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's "matched Employee contributions" based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

Years (or Periods) of Service	Matching Percentage
______	______%
______	______%
______	______%

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1. [ ] vesting purposes
2. [ ] eligibility purposes

h. [ ] **Flexible Discretionary Match.** (may not be elected if this Plan is a Money Purchase Pension Plan) "Flexible Discretionary Match" means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. Except as specified below, the Employer retains discretion over the formula or formulas for allocating the Flexible Discretionary Match, including the Discretionary Matching Contribution rate or amount, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants or categories of Participants who will receive the allocation, and the time period applicable to any matching formula(s) (collectively, the "Flexible Discretionary Matching Formula"), except as the Employer otherwise elects in its Adoption Agreement. Such contributions will be subject to the Instructions and Notice requirement of Section 4.12, reproduced below, unless the Employer elects to use a "Rigid Discretionary Match" in Election 26.B.h.1. below.

The discretionary matching contribution under this Question 26.B.h. is a "Flexible Discretionary Match" unless the Employer elects to use a "Rigid Discretionary Match." (Choose 1. if applicable.)

1. [ ] **Rigid Discretionary Match.** A "Rigid Discretionary Match" means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. Such discretion will only pertain to the amount of the annual contribution. The Employer must select the allocation method for this Contribution by selecting among those Adoption Agreement options which confer no Employer Discretion regarding the allocation of such discretionary amount, for example, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants who will receive the allocation, and the time period applicable to any matching formula(s). This "Rigid Discretionary Match" is not subject to the Instructions and Notice requirement of Section 4.12.

   Section 4.12 provides: INSTRUCTIONS TO ADMINISTRATOR AND NOTIFICATION TO PARTICIPANTS. For Plan Years beginning after the end of the Plan Year in which this document is first adopted, if a "Flexible Discretionary Match" contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to *allocate* a matching contribution to Participants) and the Employer makes a "Flexible Discretionary Match" to the Plan, the Employer must provide the Plan Administrator or Trustee written instructions describing (1) how the "Flexible Discretionary Match" formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the "Flexible Discretionary Match" formula applies, and (3) if applicable, a description of each business location or business classification subject to separate "Flexible Discretionary Match" allocation formulas. Such instructions must be provided no later than the date on which the "Flexible Discretionary Match" is made to the Plan. A summary of these instructions must be communicated to Participants who receive an allocation of the "Flexible Discretionary Match" no later than 60 days following the date on which the last "Flexible Discretionary Match" contribution is made to the Plan for the Plan Year.

i. [ ] **Discretionary - tiered.** (may not be elected if this Plan is a Money Purchase Pension Plan) The Employer may make matching contributions equal to a discretionary percentage of a Participant's "matched Employee contributions," to be determined by the Employer, of each tier, to be determined by the Employer. Such discretion will only pertain to the amount of the contribution. The tiers may be based on the rate of a Participant's "matched Employee contributions" or Years of Service. Such contribution is subject to the Instructions and Notice requirement of Section 4.12.
NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate $ or %)	Matching Percentage
First ______	______%
Next ______	______%
Next ______	______%
Next ______	______%

j. [X] Other: The Employer will make fixed matching contributions in a uniform rate of fifty percent (50%) of each Eligible Employee's "matched Employee contributions" each pay period that do not exceed three percent (3%) of the Eligible Employee's Compensation for that pay period (the formula described must satisfy the definitely determinable requirement under Regulation §1.401-1(b) and if this is a Money Purchase Pension Plan, it must not be a discretionary contribution formula. **NOTE**: Under Question 26.B.j., the Employer may only describe the allocation of Matching Contributions from the elections available under Question 26 and/or a combination thereof as to a Participant group or contribution type (e.g., fixed – uniform rate applies to Group A; contributions to other Employees will be allocated as a tiered contribution.)

27. MATCHING CONTRIBUTION PROVISIONS

A. **Maximum matching contribution.** The total matching contribution made on behalf of any Participant for any Plan Year will not exceed:

a. [ ] N/A (no Plan specific limit on the amount of matching contribution)
b. [ ] $______.
c. [X] 1.5 % of Compensation.

B. **Period of determination.** Any matching contribution other than a "Flexible Discretionary Match" will be applied on the following basis (and "matched Employee contributions" and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period. Skip if the only Matching Contribution is a Flexible Discretionary Match.):

d. [ ] the Plan Year (potential annual true-up required)
e. [X] each payroll period (no true-up)
f. [ ] each month (potential monthly true-up required)
g. [ ] each Plan Year quarter (potential quarterly true-up required)
h. [ ] each payroll unit (e.g., hour) (no true-up)
i. [ ] Other (specify): ________________________________ The time period described must be definitely determinable under Treas. Reg. §1.401-1(b). This line may be used to apply different options to different matching contributions (e.g., Discretionary matching contributions will be allocated on a Plan Year period while fixed matching contributions will be allocated on each payroll period.) Such contribution period is subject to the Instructions and Notice requirement of Section 4.12.

28. ALLOCATION CONDITIONS (Plan Section 4.3) Select a. OR b. and all that apply of c. - h.

a. [X] **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 29).
b. [ ] **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)

Conditions for Participants NOT employed on the last day of the Plan Year.

1. [ ] A Participant must complete more than ______ Hours of Service (or ______ months of service if the elapsed time method is selected).
2. [ ] A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
3. [ ] Participants will NOT share in the allocations, regardless of service.
4. [ ] Participants will share in the allocations, regardless of service.
5. [ ] Other: ________________________________ (must be definitely determinable)

Conditions for Participants employed on the last day of the Plan Year

6. [ ] No service requirement.

7. [ ] A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8. [ ] A Participant must complete at least _______ Hours of Service during the Plan Year.
9. [ ] Other: __________ (must be definitely determinable and not subject to Employer discretion)

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

c. [ ] Death
d. [ ] Total and Permanent Disability
e. [ ] Termination of employment on or after Normal Retirement Age
   1. [ ] or Early Retirement Date

Conditions based on period other than Plan Year. The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at b.8. above).

f. [ ] The Plan Year quarter.
g. [ ] Payroll period.
h. [ ] Other: __________ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve month period).

29. FORFEITURES (Plan Sections 1.21 and 4.3(e))

Timing of Forfeitures. Except as provided in Plan Section 1.21, a Forfeiture will occur:

a. [ ] N/A (may only be selected if all contributions are fully Vested (default provisions at Plan Section 4.3(e) apply))
b. [X] As of the earlier of (1) the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service, or (2) the distribution of the entire Vested portion of the Participant's Account.
c. [ ] As of the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service.
d. [ ] As soon as reasonably practical after the date the Participant severs employment.

Use of Forfeitures. (skip if this is NOT a Money Purchase Pension Plan; for Profit Sharing Plans, Forfeitures are disposed of in accordance with Employer direction that is consistent with Section 4.3(e)).
Forfeitures will be (select one):

e. [ ] added to the Employer contribution and allocated in the same manner
f. [ ] used to reduce any Employer contribution
g. [ ] allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
h. [X] other: First used to pay plan expenses and then used to reduce any Employer contributions. Forfeitures of Employer matching contributions will be treated the same as forfeitures of Employer contributions that are not matching contributions. _____________________ (describe the treatment of Forfeitures in a manner that is definitely determinable and that is not subject to Employer discretion)

30. MANDATORY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if mandatory Employee contributions NOT selected at Question 11.d.)

Type of mandatory Employee Contribution. The mandatory Employee contribution is being made in accordance with the following: (select one)

a. [ ] The mandatory Employee contribution is a condition of employment.
b. [ ] The Employee must make, on or before first being eligible to participate under any Plan of the Employer, an irrevocable election to contribute the mandatory Employee contribution to the Plan. No Eligible Employee will become a Participant unless the Employee makes such an irrevocable election.

Amount of mandatory Employee Contribution (select one)

c. [ ] An Eligible Employee must contribute to the Plan _____% (not to exceed 25%) of Compensation.
d. [ ] An Eligible Employee must, prior to his or her first Entry Date, make a one-time irrevocable election to contribute to the Plan from ______% (not less than 1%) to ______% (not to exceed 25%) of Compensation.

Conditions of Mandatory Employee Contributions

e. [ ] **Additional provisions and conditions:** ____ (must be definitely determinable; e.g., Only full-time Employees must make mandatory Employee contributions)

Employer pick-up contribution. The mandatory Employee contribution is "picked-up" by the Employer under Code §414(h)(2) unless elected below. (select if applicable)

f. [ ] The mandatory Employee contribution is not "picked-up" by the Employer.

DISTRIBUTIONS

31. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)
Distributions under the Plan may be made in (select all that apply; must select at least one):
a. [X] lump-sums
b. [X] substantially equal installments
c. [X] partial withdrawals, provided the minimum withdrawal is $______ (leave blank if no minimum)
d. [ ] partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (leave blank if no exceptions):
   1. [ ] Only Participants (and not Beneficiaries) may elect partial withdrawals or installments
   2. [ ] Other: ______________________________ (e.g., partial is not permitted for death benefits. Must be definitely determinable and not subject to Employer discretion.)
e. [ ] annuity: ______________________________ (describe the form of annuity or annuities)
f. [ ] other: ______________________________ (must be definitely determinable and not subject to Employer discretion)

NOTE: Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

Cash or property. Distributions may be made in:
g. [X] cash only, except for (select all that apply; leave blank if none apply):
   1. [ ] insurance Contracts
   2. [ ] annuity Contracts
   3. [ ] Participant loans
   4. [ ] all investments in an open brokerage window or similar arrangement
h. [ ] cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):
   1. [ ] ______________________________ (must be definitely determinable and not subject to Employer discretion)

Joint and Survivor Annuity provisions. (Plan Sections 6.5(e) and 6.6(e) (select one) The Joint and Survivor Annuity provisions do not apply to the Plan unless selected below (choose if applicable)
i. [ ] **Joint and Survivor Annuity applicable as normal form of distribution**. The Joint and Survivor annuity rules set forth in Plan Sections 6.5(e) and 6.5(f) apply to all Participants (if selected, then annuities are a form of distribution under the Plan even if e. above is not selected)
j. [ ] **Joint and Survivor Annuity rules apply based on Participant election**. Plan Section 6.5(f) will apply and the joint and survivor rules of Code §§401(a)(11) and 417 (as set forth in Plan Sections 6.5(e) and 6.6(e) will apply only if an annuity form of distribution is selected by a Participant.

AND, if i. or j. is selected above, the one-year marriage rule does not apply unless selected below (choose if applicable).
   1. [ ] The one-year marriage rule applies.

Spousal consent requirements. Spousal consent is not required for any Plan provisions (except as otherwise elected in i. above for the joint and survivor annuity rules) unless selected below (choose if applicable)
k. [ ] **Required for all distributions**. A Spouse must consent to all distributions (other than required minimum distributions).
l. [ ] **Beneficiary designations**. A married Participant's Spouse will be the Beneficiary of the entire death benefit unless the Spouse consents to an alternate Beneficiary.

AND, if k. or l. is selected, the one-year marriage rule does not apply unless selected below (choose if applicable).
   1. [ ] The one-year marriage rule applies.

32. CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT. Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

A. **Accounts in excess of $5,000**
a. [X] Distributions may be made as soon as administratively feasible following severance of employment.
b. [ ] Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
c. [ ] Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.
d. [ ] Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.
e. [ ] Distributions may be made as soon as administratively feasible after ______ months have elapsed following severance of employment.
f. [ ] No distributions may be made until a Participant has reached Early or Normal Retirement Date.
g. [ ] Other: ______________________________ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

B. **Accounts of $5,000 or less**
h. [X] Same as above
i. [ ] Distributions may be made as soon as administratively feasible following severance of employment.
j. [ ] Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
k. [ ] Other: ________________________________ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

C. **Timing after initial distributable event.** If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 32.f. and 32.h.):
l. [ ] Other: ________________________________ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

D. **Participant consent (i.e., involuntary cash-outs).** Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

NOTE: The Plan provides that distributions of amounts of $5,000 or less are only paid as lump-sums.

m. [ ] No, Participant consent is required for all distributions.
n. [X] Yes, Participant consent is required only if the distribution is over:
1. [X] $5,000
2. [ ] $1,000
3. [ ] $______ (less than $1,000)

NOTE: If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

Automatic IRA rollover. With respect to mandatory distributions of amounts that are $1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.
4. [ ] If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least $______ (e.g., $200).

E. **Rollovers in determination of $5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the $5,000 threshold for timing of distributions, form of distributions, or consent rules.
o. [ ] Exclude rollovers (rollover contributions will be **excluded** in determining the $5,000 threshold)

NOTE: Regardless of the above election, if the Participant consent threshold is $1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

33. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))
Distributions upon the death of a Participant prior to the "required beginning date" will:
a. [X] be made pursuant to the election of the Participant or "designated Beneficiary"
b. [ ] begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
c. [ ] be made within 5 (or if lesser _____) years of death for all Beneficiaries
d. [ ] be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

NOTE: The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

34. OTHER PERMITTED DISTRIBUTIONS (select all that apply; leave blank if none apply)
A. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)
In-service distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (if applicable, answer a. - e.; leave blank if not applicable):
a. [X] In-service distributions may be made to a Participant who has not separated from service provided the following has been satisfied (select one or more) (options 2. - 5. may only be selected with Profit Sharing Plans):
1. [X] Age. The Participant has reached: (select one)
a. [ ] Normal Retirement Age
b. [ ] age 62
c. [ ] age 59 1/2 (may not be selected if a Money Purchase Pension Plan)
d. [X] age 70.5 (may not be less than age 62 for Money Purchase Pension Plans)
2. [ ] the Participant has been a Participant in the Plan for at least ______ years (may not be less than five (5))

3. [ ] the amounts being distributed have accumulated in the Plan for at least 2 years
4. [ ] other: ________________________________ (must satisfy the definitely determinable requirement under Regulations §401-1(b); may not be subject to Employer discretion; and must be limited to a combination of items a.1. – a.3. or a Participant's disability).)

More than one condition. If more than one condition is selected above, then a Participant only needs to satisfy one of the conditions, unless selected below:

5. [ ] A Participant must satisfy each condition

NOTE: Distributions from a Transfer Account attributable to a Money Purchase Pension Plan are not permitted prior to age 62.

Account restrictions. In-service distributions are permitted from the following Participant Accounts:

b. [X] all Accounts

c. [ ] only from the following Accounts (select one or more):
1. [ ] Account attributable to Employer matching contributions
2. [ ] Account attributable to Employer contributions other than matching contributions
3. [ ] Rollover Account
4. [ ] Transfer Account
   Permitted from the following assets attributable to (select one or both):
   a. [ ] non-pension assets
   b. [ ] pension assets (e.g., from a Money Purchase Pension Plan)
5. [ ] Mandatory Employee Contribution Account
6. [ ] Other: ____ (specify Account(s) and conditions in a manner that satisfies the definitely determinable requirement under Regulation §1.401-1(b) and is not subject to Employer discretion)

Limitations. The following limitations apply to in-service distributions:

d. [X] N/A (no additional limitations)

e. [ ] Additional limitations (select one or more):
1. [ ] The minimum amount of a distribution is $______.
2. [ ] No more than ______ distribution(s) may be made to a Participant during a Plan Year.
3. [ ] Distributions may only be made from Accounts which are fully Vested.
4. [ ] In-service distributions may be made subject to the following provisions: ______ (must satisfy the definitely determinable requirement under Regulation §1.401-1(b) and not be subject to Employer discretion).

B. HARDSHIP DISTRIBUTIONS (Plan Sections 6.12) (may not be selected if this is a Money Purchase Pension Plan)
Hardship distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (leave blank if not applicable):

f. [ ] Hardship distributions are permitted from the following Participant Accounts:
1. [ ] all Accounts
2. [ ] only from the following Accounts (select one or more):
   a. [ ] Account attributable to Employer matching contributions
   b. [ ] Account attributable to Employer contributions other than matching contributions
   c. [ ] Rollover Account (if not available at any time under Question 36)
   d. [ ] Transfer Account (other than amounts attributable to a money purchase pension plan)
   e. [ ] Mandatory Employee Contribution Account
   f. [ ] Other: ______________________________ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

NOTE: Hardship distributions are NOT permitted from a Transfer Account attributable to pension assets (e.g., from a Money Purchase Pension Plan).

Additional limitations. The following limitations apply to hardship distributions:

3. [ ] N/A (no additional limitations)
4. [ ] Additional limitations (select one or more):
   a. [ ] The minimum amount of a distribution is $______.
   b. [ ] No more than ______ distribution(s) may be made to a Participant during a Plan Year.
   c. [ ] Distributions may only be made from Accounts which are fully Vested.
   d. [ ] A Participant does not include a Former Employee at the time of the hardship distribution.
   e. [ ] Hardship distributions may be made subject to the following provisions: ______ (must satisfy the definitely determinable requirement under Regulation §1.401-1(b) and not be subject to Employer discretion).

Beneficiary Hardship. Hardship distributions for Beneficiary expenses are NOT allowed unless otherwise selected below.

5. [ ] Hardship distributions for expenses of Beneficiaries are allowed
   Special effective date (may be left blank if effective date is same as the Plan or Restatement Effective Date; select a. and, if applicable, b.)
   a. [ ] effective as of ____________________________________
   b. [ ] eliminated effective as of __________________________.

MISCELLANEOUS

35. LOANS TO PARTICIPANTS (Plan Section 7.4)
   a. [X] New loans are NOT permitted.
   b. [ ] New loans are permitted.

   NOTE: Regardless of whether new loans are permitted, if the Plan permits rollovers and/or plan-to-plan transfers, then the Administrator may, in a uniform manner, accept rollovers and/or plan-to-plan transfers of loans into this Plan.

36. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 11.f.)
   Eligibility. Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):
   a. [X] Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant
   b. [ ] Participants who are Former Employees

   Distributions. When may distributions be made from a Participant's Rollover Account?
   c. [ ] At any time
   d. [X] Only when the Participant is otherwise entitled to any distribution under the Plan

37. **HEART ACT** (Plan Section 4.11) (select one or more)
   a. [ ] **HEART ACT Continued benefit accruals.** Continued benefit accruals will apply
   b. [ ] **Distributions for deemed severance of employment.** The Plan permits distributions for deemed severance of employment.

Reliance on Provider Opinion Letter. The Provider has obtained from the IRS an Opinion Letter specifying the form of this document satisfies Code §401 as of the date of the Opinion Letter. An adopting Employer may rely on the Provider's IRS Opinion Letter *only* to the extent provided in Rev. Proc. 2017-41 or subsequent guidance. The Employer may not rely on the Opinion Letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the Opinion Letter and in Rev. Proc. 2017-41 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the IRS.

An Employer who has ever maintained or who later adopts an individual medical account, as defined in Code §415(l)(2)) in addition to this Plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code§415.

This Adoption Agreement may be used only in conjunction with the basic Plan document #01. This Adoption Agreement and the basic Plan document will together be known as Voya Retirement Insurance and Annuity Company Non-Standardized Governmental 401(a) Pre-Approved Plan #001.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

Execution for Page Substitution Amendment Only. If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Election(s) _______ effective ___________, by substitute Adoption Agreement page number(s) _______. The Employer should retain all Adoption Agreement Execution Pages and amended pages. (*Note: The Effective Date may be retroactive or may be prospective*.)

The Provider, Voya Retirement Insurance and Annuity Company will notify the Employer of any amendment to this Pre-approved Plan or of any abandonment or discontinuance by the Provider of its maintenance of this Pre-approved Plan. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and Voya Retirement Insurance and Annuity Company no longer has any obligations to the Employer that relate to the adoption of this Plan. For inquiries regarding the adoption of the Pre-approved Plan, the Provider's intended meaning of any Plan provisions or the effect of the Opinion Letter issued to the Provider, please contact the Provider or the Provider's representative.

Provider Name: Voya Retirement Insurance and Annuity Company

Address: One Orange Way

Windsor Connecticut 06054

Telephone Number: 1-800-584-6001

Email address (optional): ______________________

The Employer, by executing below, hereby adopts this Plan (add additional signature lines as needed). NOTE: If more than one Plan type is adopted, the Plan Provider must provide multiple plan documents for Employer signature.

EMPLOYER: Central Florida Regional Transportation Authority d/b/a LYNX

By: ______________________________ ______________________

DATE SIGNED

APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS

A. **Special effective dates** (leave blank if not applicable):

a. [ ] **Special effective date(s):** ______________________________. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law. (The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance)

B. **Other permitted elections** (the following elections are optional):

a. [ ] **No other permitted elections**

The following elections apply (select one or more):

b. [ ] **Deemed 125 compensation** (Plan Section 1.23). Deemed 125 compensation will be included in Compensation and 415 Compensation.

c. [X] **Break-in-Service Rule**s. The following Break-in-Service rules apply to the Plan.(select 1. or 2.)

1. [X] **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(e)). The "rule of parity" provisions in Plan Section 3.5(d) will apply for (select one or both):
   a. [ ] eligibility purposes
   b. [X] vesting purposes

2. [ ] **Break-in-Service rules for rehired Employees.** The following Break-in-Service rules set forth in Plan Sections 3.2 and 3.5 apply: (select one or both)
   a. [ ] all Break-in-Service rules set forth in such Sections.
   b. [ ] only the following: ____________________ (specify which provisions apply to the Plan)

d. [X] **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(f)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(f), the following order of priority will be used: If no Beneficiary has been designated by the Participant, the default Beneficiary will be as follows: (1) Participant's surviving Spouse (if the Participant was married at the time of death); and (2) If the Participant does not have a surviving Spouse at the time of death, the individual(s) bearing the highest ranking relationship to the Participant, determined in accordance with the order set forth for intestate succession under ?732.103 of the Florida Statutes (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).

e. [ ] **Joint and Survivor Annuity/Pre-Retirement Survivor Annuity**. If the Plan applies the Joint and Survivor Annuity rules, then the normal form of annuity will be a joint and 50% survivor annuity (i.e., if 31.i. or 31.j. is selected) and the Pre-Retirement Survivor Annuity will be equal to 50% of a Participant's interest in the Plan unless selected below (select 1. and/or 2.)

1. [ ] **Normal form of annuity.** Instead of a joint and 50% survivor annuity, the normal form of the qualified Joint and Survivor Annuity will be: (select one)
   a. [ ] joint and 100% survivor annuity
   b. [ ] joint and 75% survivor annuity
   c. [ ] joint and 66 2/3% survivor annuity

2. [ ] **Pre-Retirement Survivor Annuity.** The Pre-Retirement Survivor Annuity (minimum Spouse's death benefit) will be equal to 50% of a Participant's interest in the Plan unless a different percentage is selected below: (select one)
   a. [ ] 100% of a Participant's interest in the Plan.
   b. [ ] _____% (may not be less than 50%) of a Participant's interest in the Plan.

f. [ ] **Limitation Year** (Plan Section 1.30). The Limitation Year for Code §415 purposes will be ____________ (must be a consecutive twelve month period) instead of the "determination period" for Compensation.

g. [ ] **415 Limits when 2 defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:

1. [ ] Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": ____.

h. [ ] **Recognition of Service with other employers** (Plan Sections 1.40 and 1.55). Service with the following employers (in addition to those specified at Question 15) will be recognized as follows (select one or more):

		Eligibility	Vesting	Contribution Allocation
1.	[ ] Employer name: ____________	a. [ ]	b. [ ]	c. [ ]
2.	[ ] Employer name: ____________	a. [ ]	b. [ ]	c. [ ]
3.	[ ] Employer name: ____________	a. [ ]	b. [ ]	c. [ ]
4.	[ ] Employer name: ____________	a. [ ]	b. [ ]	c. [ ]
5.	[ ] Employer name: ____________	a. [ ]	b. [ ]	c. [ ]
6.	[ ] Employer name: ____________	a. [ ]	b. [ ]	c. [ ]
Limitations				
7.	[ ] The following provisions or limitations apply with respect to the recognition of prior service: ____________ (e.g., credit service with X only on/following 1/1/19)	a. [ ]	b. [ ]	c. [ ]

i. [X] **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):

1. [X] **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: (1)Notwithstanding any other provision that may be to the contrary, Plan benefits are subject to Section 112.3173, Florida Statutes (2) For the avoidance of doubt, if an Employee completes the required Hours of Service during a computation period, the Employee will be credited for a Year of Service for such computation period, even if the Employee is not employed for the entire computation period. The Employee will be credited with a Year of Service during the computation period (as opposed to at the end of the computation period) upon having completed the required Hours of Service in that computation period. No more than one Year of Service will be credited for any computation period. ____ (must be definitely determinable and satisfy the parameters set forth at Question 17)
2. [ ] **Pre-amendment vesting schedule.** (Plan Section 6.4(b)). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 17 applies to any Participants, then the following provisions apply (must select one of a. – d.):

   Applicable Participants. The vesting schedules in Question 17 only apply to:
   a. [ ] Participants who are Employees as of ____________ (enter date).
   b. [ ] Participants in the Plan who have an Hour of Service on or after ____________ (enter date).
   c. [ ] Participants (even if not an Employee) in the Plan on or after ____________ (enter date).
   d. [ ] Other: ____________ (e.g., Participants in division A. Must be definitely determinable.)

j. [ ] **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))

NOTE: This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.

The "required beginning date" for a Participant is:

1. [ ] April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
2. [ ] April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
   a. [ ] A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of ____________ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
      1. [ ] N/A (annuity distributions are not permitted)
      2. [ ] Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
      3. [ ] Upon the recommencement of distributions, a new Annuity Starting Date is created.
   b. [ ] A Participant who had not begun receiving required minimum distributions as of ____________ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
      1. [ ] The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December

31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.

k. [ ] **Other spousal provisions** (select one or more)

1. [ ] **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following: ________________________.
2. [ ] **Automatic revocation of spousal designation** (Plan Section 6.2(g)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
3. [ ] **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.

l. [ ] **Applicable law.** Instead of using the applicable laws set forth in Plan Section 9.4(a), the Plan will be governed by the laws of: ________________________

m. [X] **Total and Permanent Disability.** Instead of the definition at Plan Section 1.50, Total and Permanent Disability means: the individual can no longer continue in the service of his Employer because of a mental or physical condition that is likely to result in death or is expected to be of long-continued or indefinite duration of not less than 12 months. A Participant has incurred a Total and Permanent Disability only if the Participant is either (a) eligible for Social Security under Section 223(d) of the Social Security Act for determining eligibility for Social Security benefits, and/or (b) eligible for benefits under the Employer's long term disability program. Each of (a) and (b) require that the permanence and degree of impairment be supported by medical evidence. The Plan Administrator may establish reasonable procedures for determining whether a Participant has incurred a Total and Permanent Disability. (must be definitely determinable).

n. [ ] **Inclusion of Reclassified Employees** (Plan Section 1.17(a))**.** The Employer does not exclude Reclassified Employees subject to the following provisions: (leave blank if not applicable): ________________________

o. [ ] **Claims procedures** (Plan Section 2.10). The claims procedures forth in Plan Section 2.10(a) – (b) apply unless otherwise elected below or unless the Administrator has operationally adopted alternative procedures.

1. [ ] The claims procedures set forth in Plan Section 2.10(c) – (g) apply instead of Plan Section 2.10(a).
2. [ ] The claims procedures set forth in Plan Section 2.10(c)-(g) apply as follows: ________________________ (specify which provisions apply and/or modified)

p. [ ] **Age 62 In-Service Distributions For Transferred Money Purchase Assets** (Plan Section 6.11) In-service distributions will be allowed for Participants at age 62. (applies only for Transfer Accounts from a Money Purchase Pension Plan) (skip this question if the Plan is a Money Purchase Pension Plan or if in-service distributions are already permitted for Transferred Accounts at Question 34)

Limitations. The following limitations apply to these in-service distributions:

1. [ ] The Plan already provides for in-service distributions and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
2. [ ] N/A (no limitations)
3. [ ] The following elections apply to in-service distributions at age 62 (select one or more):
   a. [ ] The minimum amount of a distribution is $_____ (may not exceed $1,000).
   b. [ ] No more than _____ distribution(s) may be made to a Participant during a Plan Year.
   c. [ ] Distributions may only be made from Accounts which are fully Vested.
   d. [ ] In-service distributions may be made subject to the following provisions: _____ (must be definitely determinable and not subject to discretion).

q. [ ] **QLACs**. (Plan Section 6.8(e)(4) A Participant may elect a QLAC (as defined in Plan Section 6.8(e)(4)) or any alternative form of annuity permitted pursuant to a QLAC in which the Participant's Account has been invested.

ADMINISTRATIVE PROCEDURES

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

A. **Loan Limitations.** (complete only if loans to Participants are permitted; leave blank if none apply)
  a. [ ] Limitations (select one or more):
    1. [ ] Loans will be treated as Participant directed investments.
    2. [ ] Loans will only be made for hardship or financial necessity as specified below (select a. or b.)
      a. [ ] hardship reasons specified in Plan Section 6.12
      b. [ ] financial necessity (as defined in the loan program).
    3. [ ] The minimum loan will be $______.
    4. [ ] A Participant may only have ______ (e.g., one (1)) loan(s) outstanding at any time.
    5. [ ] All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
    6. [ ] The home loan term will be _____ years. (if not selected, the Administrator establishes the term for repayment of a home loan)
    7. [ ] **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
      a. [ ] Account(s) attributable to Employer matching contributions
      b. [ ] Account attributable to Employer contributions other than matching contributions
      c. [ ] Rollover Account
      d. [ ] Transfer Account
      e. [ ] Other: ____
      AND, if loans are restricted to certain accounts, the limitations of Code §72(p) will be applied:
      f. [ ] by determining the limits by only considering the restricted accounts.
      g. [ ] by determining the limits taking into account a Participant's entire interest in the Plan.

  Additional Loan Provisions (select all that apply; leave blank if none apply)
  b. [ ] **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll (e.g., partner who only has a draw)):
    1. [ ] payroll deduction
    2. [ ] ACH (Automated Clearing House)
    3. [ ] check
      a. [ ] Only for prepayment
  c. [ ] **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
    1. [ ] ______ percentage points over the prime interest rate
    2. [ ] ______%
    3. [ ] the Administrator establishes the rate at the time the loan is made
  d. [ ] **Refinancing.** Loan refinancing is allowed.

B. **Life Insurance.** (Plan Section 7.5)
  a. [X] Life insurance may not be purchased.
  b. [ ] Life insurance may be purchased...
    1. [ ] at the option of the Administrator
    2. [ ] at the option of the Participant

  Limitations
    3. [ ] N/A (no limitations)
    4. [ ] The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
      a. [ ] Each initial Contract will have a minimum face amount of $______.
      b. [ ] Each additional Contract will have a minimum face amount of $______.
      c. [ ] The Participant has completed _____ Years (or Periods) of Service.
      d. [ ] The Participant has completed ______ Years (or Periods) of Service while a Participant in the Plan.
      e. [ ] The Participant is under age ______ on the Contract issue date.
      f. [ ] The maximum amount of all Contracts on behalf of a Participant may not exceed $______.
      g. [ ] The maximum face amount of any life insurance Contract will be $______.

C. **Plan Expenses.** Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?
  a. [ ] No
  b. [X] Yes

Use of Forfeitures

Forfeitures of Employer contributions other than matching contributions will be:

c. [ ] added to the Employer contribution and allocated in the same manner

d. [ ] used to reduce any Employer contribution

e. [ ] allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year

f. [ ] other: ______________________ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion)

Forfeitures of Employer matching contributions will be:

g. [ ] N/A. Same as above or no Employer matching contributions.

h. [ ] used to reduce the Employer matching contribution.

i. [ ] used to reduce any Employer contribution.

j. [ ] other: ______________________ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion)

D. **Directed investments**

a. [ ] Participant directed investments are NOT permitted.

b. [X] Participant directed investments are permitted from the following Participant Accounts:

1. [ ] all Accounts
2. [X] only from the following Accounts (select one or more):
   a. [ ] Account attributable to Employer contributions
   b. [ ] Rollover Account
   c. [ ] Transfer Account
   d. [X] Other: Participant directed investments are permitted from all Accounts. It is the sole and exclusive responsibility of the Board of Trustees (and no other party) to select the menu of investment options available for Participant direction of investments. The Board of Trustees (and no other party) will designate how accounts will be invested in the absence of proper affirmative direction from the Participant. The Board of Trustees (and no other party) may designate a default fund under the Plan for contributions made on behalf of Participants who have been identified by the Plan Administrator as having not specified investment choices under the Plan. The Board of Trustees (and no other party) may appoint, at its option, one or more Investment Managers, investment advisers, or other agents to provide investment direction with respect to Plan assets. (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

E. **Rollover Limitations.** Will the Plan accept rollover contributions and/or direct rollovers from the sources specified below?

a. [ ] No, Administrator determines in operation which sources will be accepted.

b. [X] Yes

Rollover sources. Indicate the sources of rollovers that will be accepted (select one or more)

1. [X] **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
   a. [X] a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
   b. [ ] a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
   c. [X] a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
   d. [ ] a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
   e. [X] a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
   f. [ ] a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
   g. [X] a plan described in Code §457(b) (eligible deferred compensation plan)

   Direct Rollovers of Participant Loan. The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)

   h. [ ] The Plan will accept a direct rollover of a Participant loan
   i. [ ] The Plan will only accept a direct rollover of a Participant loan only in the following situation(s): ______________________ (e.g., only from Participants who were employees of an acquired organization).
2. [X] **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
   a. [X] a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
   b. [X] a plan described in Code §403(a) (an annuity plan)
   c. [X] a plan described in Code §403(b) (a tax-sheltered annuity)
   d. [X] a governmental plan described in Code §457(b) (eligible deferred compensation plan)

3. [X] **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

F. **Trustee(s) or Insurer(s)**. Information regarding Trustee(s)/Insurer(s) (required for the Summary Plan Description and, if requested, the Trust Agreement)

(Note: Select a. if not using provided trust. MUST select b and following questions as applicable):

a. [X] Do not produce the trust agreement
b. [ ] Complete the following UNLESS not selecting supporting forms:

Trustee/Insurer *(select a. OR one or more of d. - e.)*

c. [ ] **Insurer.** This Plan is funded exclusively with Contracts (select one or more of 1. - 4)
   Name of Insurer(s)
   1. [ ] __________
   2. [ ] __________
   3. [ ] Use Employer address/telephone number/email
   4. [ ] Use following address/telephone number/email
      a. Street: ____________________________
      b. City: ____________________________
      c. State: ____________________________
      d. Zip: ______________________
      e. Telephone: ________________________
      f. Email: ____________________________

d. [X] Individual Trustee(s)
e. [ ] Corporate Trustee

Name of Trust

f. Specify name of Trust (required for FIS trust): __________

Individual Trustees (if d. selected above, complete g. – j.)
Directed/Discretionary Trustees. The individual Trustee(s) executing this Adoption Agreement are (select g. or h.)

g. [X] Select for each individual Trustee (skip to next question)
h. [ ] The following selections apply to all individual Trustee(s) (select 1. - 4. as applicable)
   1. [ ] A discretionary Trustee over all plan assets (may not be selected with 2. - 4.)
   2. [ ] A nondiscretionary (directed) Trustee over all plan assets (may not be selected with 1., 3. or 4.)
   3. [ ] The individual Trustee(s) will serve as a discretionary Trustee over the following assets: ______________ (may not be selected with 1. or 2.)
   4. [ ] The individual Trustee(s) will serve as a nondiscretionary (directed) Trustee over the following assets: ____________ (may not be selected with 1. or 2.)

Individual Trustee(s) (complete if d. selected above)

i. [X] Individual Trustee(s) are (select one or more of a. - j.; enter address at j. below)
   a. **Name** __Brian Anderson__
      Title/Email:
      1. Title __member of the Board of Trustees__
      2. Email ____________ (optional)
      Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
      3. [X] Discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
      4. [ ] A discretionary Trustee over the following plan assets: ___________ (may not be select with 3. or 5.)
      5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
      6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

   b. **Name** __Michelle Daley__
      Title/Email:
      1. Title __member of the Board of Trustees__
      2. Email __________ (optional)
      Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
      3. [X] Discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
      4. [ ] A discretionary Trustee over the following plan assets: ___________ (may not be select with 3. or 5.)
      5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
      6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

c. **Name** __Albert J Francis II__
Title/Email:
1. Title __member of the Board of Trustees__
2. Email __________ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. [X] Discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
4. [ ] A discretionary Trustee over the following plan assets: __________ (may not be select with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

d. **Name** __Erawarth Sooknanan__
Title/Email:
1. Title __member of the Board of Trustees__
2. Email __________ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. [X] Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. [ ] A discretionary Trustee over the following plan assets: __________ (may not be selected with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets _______________ (may not be selected with 3. or 5.)

e. **Name** __Dennis Hines__
Title/Email:
1. Title __member of the Board of Trustees__
2. Email __________ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. [X] Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. [ ] A discretionary Trustee over the following plan assets: __________ (may not be selected with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

f. **Name** __Grady Miller__
Title/Email:
1. Title __member of the Board of Trustees__
2. Email __________ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. [X] Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. [ ] A discretionary Trustee over the following plan assets: __________ (may not be selected with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

g. **Name** __________
Title/Email:
1. Title __________
2. Email __________ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. [ ] Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. [ ] A discretionary Trustee over the following plan assets: __________ (may not be selected with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

h. **Name** __________
Title/Email:
1. Title __________
2. Email __________ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. [ ] Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. [ ] A discretionary Trustee over the following plan assets: __________ (may not be selected with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

i. **Name __________**
Title/Email:
1. Title __________
2. Email __________ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. [ ] Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. [ ] A discretionary Trustee over the following plan assets: __________ (may not be selected with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

j. **Name __________**
Title/Email:
1. Title __________
2. Email __________ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. [ ] Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. [ ] A discretionary Trustee over the following plan assets: __________ (may not be selected with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets __________ (may not be selected with 3. or 5.)

j. [X] **Individual Trustee Address** (complete if d. selected above)
1. [X] Use Employer address/telephone number/email
2. [ ] Use following address/telephone number/email
   a. Street: __________
   b. City: __________
   c. State: __________
   d. Zip: __________
   e. Telephone: __________
   f. Email: __________

Corporate Trustee Name/Type/Address (complete if e. selected above)
k. [ ] Name __________
Address/telephone number/email
1. [ ] Use Employer address/telephone number/email
2. [ ] Use following address/telephone number/email
   a. Street: _________
   b. City: _________
   c. State: _________
   d. Zip: _________
   e. Telephone: _________
   f. Email: _________

Directed/Discretionary. The Corporate Trustee is (select 3. - 6. as applicable)
3. [ ] A discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
4. [ ] A nondiscretionary (directed) Trustee over all plan assets (may not be selected with 3., 5. or 6.)
5. [ ] A discretionary Trustee over the following plan assets over the following assets:________ (may not be selected with 3. – 4.)
6. [ ] A nondiscretionary (directed) Trustee over the following plan assets _______ (may not be selected with 3. – 4.)

Signee (optional)**:**
7. [ ] Name of person signing on behalf of the corporate Trustee __________
8. [ ] Email address of person signing on behalf of the corporate Trustee __________

Special Trustee for collection of contributions. The Employer appoints the following Special Trustee with the responsibility to collect delinquent contributions *(optional)*
l. [X] **Name** Board of Trustees
Title:
1. Fiduciary
Address/telephone number/email
2. [X] Use Employer address/telephone number/email

3. [ ] Use following address/telephone number/email
   a. Street: ___________
   b. City: ___________
   c. State: ___________
   d. Zip: ___________
   e. Telephone: ___________
   f. Email: ___________

Custodian(s) Name/Address . The Custodian(s) are *(optional)*

m. [X] **Name(s)** ___Voya Institutional Trust Company___
Address/telephone number/email
1. [ ] Use Employer address/telephone number/email
2. [X] Use following address/telephone number/email
   a. Street: ___One Orange Way___
   b. City: ___Windsor___
   c. State: ___Connecticut___
   d. Zip: ___06019___
   e. Telephone: ___1-800-584-6001___
   f. Email: ___________

Investment in common, collective or pooled trust funds. The nondiscretionary Trustee, as directed or the discretionary Trustee acting without direction (and in addition to the discretionary Trustee's authority to invest in its own funds), may invest in any of the following trust funds: *(optional)*

n. [X] ___VantageTrust and such other additional or replacement common, collective or pooled trust funds as the Board of Trustees may from time to time select.___ (Specify the names of one or more trust funds in which the Plan can invest)

Choice of law

o. [ ] This trust will be governed by the laws of the state of:
1. [ ] State in which the Employer's principal office is located
2. [ ] State in which the corporate trustee or insurer is located
3. [ ] Other ____________________

VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY

NON-STANDARDIZED GOVERNMENTAL 401(a) PRE-APPROVED PLAN

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ARTICLE I
DEFINITIONS

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

1.1 "Account" means any separate notational account established and maintained by the Administrator for each Participant under the Plan. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

(a) "Combined Account" means the account representing the Participant's total interest under the Plan resulting from Employer contributions. In addition, Forfeitures are part of the Combined Account to the extent they are reallocated.

(b) "Mandatory Contribution Account" means the account established hereunder to which mandatory Employee contributions made pursuant to Section 4.8 are allocated, to the extent such contributions are not picked-up by the Employer pursuant to Code §414(h). A Participant's Mandatory Contribution Account shall be fully Vested at all times.

(c) "Rollover Account" means the account established hereunder to which amounts transferred from a qualified plan or individual retirement account in accordance with Section 4.6 are allocated.

(d) "Transfer Account" means the account established hereunder to which amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.7 are allocated.

(e) "Voluntary Contribution Account" means the account established hereunder to which after-tax voluntary Employee contributions made pursuant to Section 4.9 are allocated.

1.2 "Administrator" means the Employer unless another person, entity or committee has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

1.3 "Adoption Agreement" means the separate agreement which is executed by the Employer and sets forth the elective provisions of this Plan as specified by the Employer.

1.4 "Affiliated Employer" means any entity required to be aggregated with the Employer pursuant to Code §414.

1.5 "**Alternate Payee**" means an alternate payee pursuant to a qualified domestic relations order that meets the requirements of Code §414(p).

1.6 "Anniversary Date" means the last day of the Plan Year.

1.7 "Annuity Starting Date" means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

1.8 "Beneficiary" means the person (or entity) to whom all or a portion of a deceased Participant's interest in the Plan is, or may become, payable upon the Participant's death as identified in records maintained by the Plan, subject to the restrictions of Sections 6.2 and 6.6.

1.9 "Code" means the Internal Revenue Code of 1986, as it may be amended from time to time and includes applicable Internal Revenue Service (IRS) guidance.

1.10 "Compensation" means, with respect to any Participant, the amount determined in accordance with the following provisions, except as otherwise provided in the Adoption Agreement.

(a) **Base definition.** One of the following, as elected in the Adoption Agreement:

(1) Information required to be reported under Code §§6041, 6051 and 6052 (Wages, tips and other compensation as reported on Form W-2). Compensation means wages, within the meaning of Code §3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §§6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(2) Code §3401(a) Wages. Compensation means an Employee's wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in

wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) 415 safe harbor compensation. Compensation means wages, salaries, Military Differential Pay, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation §1.62-2(c))), and excluding the following:

(i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee's gross income, or any distributions from a plan of deferred compensation;

(ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(iv) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code §125), whether or not the contributions are actually excludable from the gross income of the Employee.

(b) **Paid during "determination period."** Compensation shall include only that Compensation which is actually paid to the Participant during the "determination period". Except as otherwise provided in this Plan, the "determination period" is the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the "determination period" shall be the Plan Year.

(c) **Inclusion of deferrals.** Notwithstanding the above, unless otherwise elected in the Adoption Agreement, Compensation shall include all of the following types of elective contributions and all of the following types of deferred compensation:

(1) Elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) and 403(b). If specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(2) Compensation deferred under an eligible deferred compensation plan within the meaning of Code §457(b).

(3) Employee contributions described in Code §414(h)(2) that are picked-up by the employing unit and thus are treated as Employer contributions.

(d) **Post-severance compensation – Code §415 Regulations.** The Administrator shall adjust Compensation for amounts that would otherwise be included in the definition of Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Plan Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of Compensation) if:

(i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** Compensation shall include leave cash-outs if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** Compensation shall include deferred compensation if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled.

(e) **Compensation Dollar limitation.** For any Plan Year (or other applicable determination period) Compensation in excess of $290,000 shall be disregarded for all. The dollar amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any "determination period" beginning with or within such calendar year. If a "determination period" consists of fewer than twelve (12) months, the $290,000 annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the "determination period," and the denominator of which is twelve (12). In applying any Plan limitation on the amount of matching contributions, where such limits are expressed as a percentage of Compensation, the Administrator may apply the Compensation limit under this Section annually, even if the matching contribution formula is applied on any time interval which is less than the full Plan Year or the Administrator may pro rate the Compensation limit.

In the case of an "eligible Participant," the dollar limitation under Code §401(a)(17) shall not apply to the extent the amount under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993. For purposes of this provision, an "eligible Participant" is an individual who first became a Participant before the first Plan Year beginning after the earlier of (i) the Plan Year in which the Plan was amended to reflect Code §401(a)(17), or (ii) December 31, 1995.

(f) **Non-eligible Employee.** If, in the Adoption Agreement, the Employer elects to exclude a class of Employees from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a "determination period" shall only include Compensation while the Employee is an Eligible Employee.

(g) **Amendment.** If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

(h) **Affiliated Employers.** Affiliated Employers are treated as one Employer for purposes of Compensation. If, however, one or more Affiliated Employers are Participating Employers and the Plan (including the Adoption Agreement or a participation agreement) allocate Employer Contributions separately among the Employees directly employed by a Participating Employer, then, in computing such allocations, Compensation paid by other Participating Employers is excluded Compensation.

1.11 "Contract" or "Policy" means any life insurance policy, retirement income policy, or annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.12 "Custodian" means a person or entity that has custody of all or any portion of the Plan assets.

1.13 "Directed Trustee" means a Trustee who, with respect to the investment of Plan assets, is subject to the direction of the Administrator, the Employer, a properly appointed Investment Manager, or Plan Participant.

1.14 "Discretionary Trustee" means a Trustee who has the authority and discretion to invest, manage or control any portion of the Plan assets.

1.15 "Early Retirement Date" means the date specified in the Adoption Agreement on which a Participant has satisfied the requirements specified in the Adoption Agreement (Early Retirement Age). If elected in the Adoption Agreement, a Participant shall become fully Vested upon satisfying such requirements if the Participant is still employed at the Early Retirement Age.

A Participant who severs from employment after satisfying any service requirement but before satisfying the age requirement for Early Retirement Age and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan (other than any accelerated vesting and allocations of Employer contributions) as though the requirements for Early Retirement Age had been satisfied.

1.16 "Effective Date" means the date this Plan, including any restatement or amendment of this Plan, is effective. Where the Plan is restated or amended, a reference to Effective Date is the effective date of the restatement or amendment, except where the context indicates a reference to an earlier Effective Date. If any provision of this Plan is retroactively effective, the provisions of this Plan generally control. However, if the provision of this Plan is different from the provision of the Employer's prior plan document and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, then the provision of such prior plan is incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, Regulations, or other IRS guidance.

The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). If one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the effective date of the plan merger(s).

1.17 "Eligible Employee" means any Eligible Employee as elected in the Adoption Agreement and as provided herein.

(a) **"Reclassified Employees."** An individual shall not be an Eligible Employee (unless otherwise elected in Appendix A to the Adoption Agreement) if such individual is a "Reclassified Employee." A "Reclassified Employee" is any person the Employer does not treat as a common law employee or as a self-employed individual (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) for federal income tax withholding purposes under Code §3401(a), irrespective of whether there is a binding determination that the individual is an Employee or a Leased Employee of the Employer. Self-Employed Individuals are not "Reclassified Employees."

(b) **Affiliated Employers.** Employees of an Affiliated Employer will not be treated as Eligible Employees prior to the date the Affiliated Employer adopts the Plan as a Participating Employer.

(c) **Union Employees.** If, in the Adoption Agreement, the Employer elects to exclude union employees, then Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining, shall not be eligible to participate in this Plan to the extent of employment covered by such agreement, unless the agreement provides for coverage in the Plan (see Section 4.1(d)). For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service in each respective category are treated separately.

(d) **Nonresident Employees.** If, in the Adoption Agreement, the Employer elects to exclude nonresident aliens, then Employees who are nonresident aliens (within the meaning of Code §7701(b)(1)(B)) who received no earned income (within the meaning of Code §911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code §861(a)(3)) shall not be eligible to participate in this Plan. In addition, this paragraph shall also apply to exclude from participation in the Plan an Employee who is a nonresident alien (within the meaning of Code §7701(b)(1)(B)) but who receives earned income (within the meaning of Code §911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code §861(a)(3)), if all of the Employee's earned income from the Employer from sources within the United States is exempt from United States income tax under an applicable income tax convention. The preceding sentence will apply only if all Employees described in the preceding sentence are excluded from the Plan.

1.18 "Employee" means any person who is employed by the Employer. The term "Employee" shall also include any person who is an employee of an Affiliated Employer and any Leased Employee deemed to be an Employee as provided in Code §414(n) or (o).

1.19 "Employer" means the governmental entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan. This plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government, and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

1.20 "Fiscal Year" means the Employer's accounting year.

1.21 "Forfeiture" means that portion of a Participant's Account that is not Vested and is disposed of in accordance with the provisions of the Plan.

A Forfeiture will occur on the following, as elected by the Employer in the Adoption Agreement:

(a) The last day of the Plan Year in which a Participant incurs five (5) consecutive 1-Year Breaks in Service, or

(b) The distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero, then such Participant shall be deemed to have received a distribution of such Vested benefit as of the year in which the severance of employment occurs. For this purpose, a Participant's Vested benefit shall not include: (i) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B), and (ii) the Participant's Rollover Account.

(c) As soon as reasonably practical after the date a Participant severs employment.

Regardless of the preceding, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Participant is not eligible to share in the allocation of Forfeitures. Furthermore, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.22 "Former Employee" means an individual who has severed employment with the Employer or an Affiliated Employer.

1.23 "415 Compensation" means, with respect to any Participant, such Participant's (a) Wages, tips and other compensation on Form W-2, (b) Code §3401(a) wages or (c) 415 safe harbor compensation as elected in the Adoption Agreement for purposes of Compensation (and as defined in Subsections 1.10(a)(1)-3 respectively). 415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences. Furthermore, regardless of any election made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code §§402(e)(3), 402(k) and 402(h)(1)(B)) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code §§125, 457, and 132(f)(4). If the Plan contains pick-up provisions (certain contributions designated as employee contributions, that are then "picked-up" by the Employer), then those pick-up contributions are not includible as Compensation for purposes of IRC §415 & Reg. §1.415-2(d)(2)(i). In addition, Military Differential Pay is treated as 415 Compensation.

(a) **Deemed 125 compensation.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), 415 Compensation shall also include deemed §125 compensation. Deemed §125 compensation is an amount that is excludable under §106 that is not available to a participant in cash in lieu of group health coverage under a §125 arrangement solely because the participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) **Post-severance compensation.** The Administrator shall adjust 415 Compensation for amounts that would otherwise be included in the definition of 415 Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** 415 Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of 415 Compensation) if:

(i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** 415 Compensation shall include leave cash-outs if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** 415 Compensation shall include deferred compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the

payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** 415 Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** 415 Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated employee (within the meaning of Code §414(q)) immediately before becoming disabled.

(c) **Back pay.** Back pay, within the meaning of Regulations §1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(d) **Dollar limitation.** 415 Compensation will be limited to the same dollar limitations set forth in Section 1.10(e) adjusted in such manner as permitted under Code §415(d).

(e) **Amendment.** Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition of 415 Compensation has been modified, then for Plan Years prior to the Plan Year which includes the adoption date of such amendment, 415 Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.24 "Hour of Service" means (a) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties during the applicable computation period (these hours will be credited to the Employee for the computation period in which the duties are performed); (b) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, incapacity (including disability), jury duty, lay-off, military duty or leave of absence) during the applicable computation period; (c) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (a) or (b), as the case may be, and under (c).

Notwithstanding (b) above, (1) no more than 501 Hours of Service will be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (2) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws; and (3) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. Furthermore, for purposes of (b) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code §414(n) or 414(o) and the Regulations thereunder.

Hours of Service will be determined using the actual hours method unless one of the methods below is elected in the Adoption Agreement. If the **actual hours** method is used to determine Hours of Service, an Employee is credited with the actual Hours of Service the Employee completes with the Employer or the number of Hours of Service for which the Employee is paid (or entitled to payment).

If the **days worked** method is elected, an Employee will be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the day.

If the **weeks worked** method is elected, an Employee will be credited with forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.

If the **semi-monthly payroll periods worked** method is elected, an Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.

If the **months worked** method is elected, an Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

If the **bi-weekly payroll periods worked** method is elected, an Employee will be credited with ninety (90) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the bi-weekly payroll period.

1.25 "Insurer" means any legal reserve insurance company which has issued or shall issue one or more Contracts or Policies under the Plan.

1.26 "Investment Manager" means a person or entity which renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or property of the Plan and which is appointed in accordance with Section 2.1(b).

1.27 "Joint and Survivor Annuity" means an immediate annuity for the life of a Participant with a survivor annuity for the life of the Participant's Spouse which is not less than fifty percent (50%), nor more than one hundred percent (100%) of the amount of the annuity payable during the joint lives of the Participant and the Participant's Spouse which can be purchased with the Participant's Vested interest in the Plan reduced by any outstanding loan balances pursuant to Section 7.4.

1.28 "Late Retirement Date" means the date of, or the first day of the month or the Anniversary Date coinciding with or next following, whichever corresponds to the election in the Adoption Agreement for the Normal Retirement Date, a Participant's actual retirement after having reached the Normal Retirement Date.

1.29 "Leased Employee" means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code §414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code §415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated workforce.

1.30 "Limitation Year" means the "determination period" used to determine Compensation. However, the Employer may elect a different Limitation Year in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the period specified in the Adoption Agreement. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new "Limitation Year" must begin on a date within the "Limitation Year" in which the amendment is made. The Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

1.31 "Military Differential Pay" means any differential wage payments made to an individual that represents an amount which, when added to the individual's military pay, approximates the amount of Compensation that was paid to the individual while working for the Employer. An individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an Employee of the Employer making the payment.

1.32 "Nonelective Contribution" means the Employer's contributions to the Plan.

1.33 "Normal Retirement Age" means the age elected in the Adoption Agreement at which time a Participant's Account shall be nonforfeitable (if elected in the Adoption Agreement and if the Participant is employed by the Employer on or after that date). For money purchase pension plans, if the employer enforces a mandatory retirement age, then the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement. Upon attaining Normal Retirement Age or the stated age and completion of the required years of service and any other reasonable requirements set forth in the Plan, the Plan will provide for full vesting of an Employee's interest.

1.34 "Normal Retirement Date" means the date elected in the Adoption Agreement.

1.35 "1-Year Break in Service" means, if the Hour of Service method is used, the applicable computation period that is used to determine a Year of Service during which an Employee or Former Employee has not completed more than 500 Hours of Service. However, if the Employer selected, in the Service Crediting Method Section of the Adoption Agreement, to define a Year of Service as less than 1,000 Hours of Service, then the 500 Hours of Service in this definition of 1-Year Break in Service shall be proportionately reduced. Further, solely for the purpose of determining whether an Employee has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.

If the elapsed time method is elected in the Service Crediting Method Section of the Adoption Agreement, then a "1-Year Break in Service" means a twelve (12) consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee or Former Employee does not perform an Hour of Service for the Employer during such twelve (12) consecutive month period.

1.36 "Participant" means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the individual has an Account balance in the Plan).

1.37 "Participant Directed Account" means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

1.38 "Participant Direction Procedures" means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.10 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.39 "Participating Employer" means an Employer which, with the consent of the "lead Employer" adopts the Plan pursuant to Section 10.1 or Article XI. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan.

1.40 "Period of Service" means the aggregate of all periods of service commencing with an Employee's first day of employment or reemployment with the Employer or an Affiliated Employer and ending on the first day of a Period of Severance, or for benefit accrual purposes, ending on the severance from service date. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee who incurs a Period of Severance of twelve (12) months or less will also receive service-spanning credit by treating any such period as a Period of Service for purposes of eligibility and vesting (but not benefit accrual). For purposes of benefit accrual, a Participant's whole year Periods of Service is equal to the sum of all full and partial periods of service, whether or not such service is continuous or contiguous, expressed in the number of whole years represented by such sum. For this purpose, fractional periods of a year will be expressed in terms of days.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized. Periods of Service with any other predecessor employer shall be recognized as elected in the Adoption Agreement.

In determining Periods of Service for purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

In the event the method of crediting service is amended from the Hour of Service method to the elapsed time method, an Employee will receive credit for a Period of Service consisting of:

(a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and

(b) The greater of (1) the Periods of Service that would be credited to the Employee under the elapsed time method for service during the entire computation period in which the transfer occurs or (2) the service taken into account under the Hour of Service method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the transfer occurs.

1.41 "Period of Severance" means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for "maternity or paternity" reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a one year Period of Severance. For purposes of this paragraph, an absence from work for "maternity or paternity" reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.42 "Plan" means this instrument (hereinafter referred to as Voya Retirement Insurance and Annuity Company Non-Standardized Governmental 401(a) Pre-Approved Plan (Basic Plan Document #01 and the Adoption Agreement) as adopted by the Employer, including all amendments thereto and any appendix which is specifically permitted pursuant to the terms of the Plan.

1.43 "Plan Year" means the Plan's accounting year as specified in the Adoption Agreement. Unless there is a Short Plan Year, the Plan Year will be a twelve-consecutive month period.

1.44 "Pre-Retirement Survivor Annuity" means an immediate annuity for the life of a Participant's Spouse, the payments under which must be equal to the benefit which can be provided with the percentage, as specified in the Adoption Agreement, of the Participant's Vested interest in the Plan as of the date of death. If no election is made in the Adoption Agreement, the percentage shall be equal to fifty percent (50%). Furthermore, if less than one hundred percent (100%) of the Participant's Vested interest in the Plan is used to provide the Pre-Retirement Survivor Annuity, a proportionate share of each of the Participant's Accounts subject to the Pre-Retirement Survivor Annuity shall be used to provide the Pre-Retirement Survivor Annuity.

1.45 "Regulation" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.46 "Retirement Date" means the date as of which a Participant retires for reasons other than Total and Permanent Disability, regardless of whether such retirement occurs on a Participant's Normal Retirement Date, Early Retirement Date or Late Retirement Date (see Section 6.1).

1.47 "Short Plan Year" means, if specified in the Adoption Agreement or as the result of an amendment, a Plan Year of less than a twelve (12) month period. If there is a Short Plan Year, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service (or months of service if the elapsed time method is used) required shall be proportionately reduced based on the number of days (or months) in the Short Plan Year.

1.48 "Spouse" means, a spouse as determined under federal tax law. In addition, with respect to benefits or rights not mandated by law, Spouse also includes a spouse as elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

1.49 "Terminated Participant" means a person who has been a Participant, but whose employment has been terminated with the Employer (including an Affiliated Employer) or applicable Participating Employer, other than by death, Total and Permanent Disability or retirement.

1.50 "Total and Permanent Disability" means, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The disability of a Participant shall be determined by a licensed physician. However, if the condition constitutes total disability under the federal Social Security Acts, the Administrator may rely upon such determination that the Participant is Totally and Permanently Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

1.51 "Trustee" means any person or entity that has agreed to serve as Trustee pursuant to the terms of the Trust agreement, or any successors thereto. The Employer may designate Trustees by business position or title. In addition, unless the context means, or the Plan provides, otherwise, the term "Trustee" shall mean the Insurer if the Plan is fully insured. The Employer has no reliance on the IRS opinion letter with respect to the separate Trust agreement.

1.52 "Trust Fund" means, if the Plan is funded with a trust, the assets of the Plan and Trust as the same shall exist from time to time.

1.53 "Valuation Date" means the date or dates specified in the Adoption Agreement. Regardless of any election to the contrary, for purposes of the determination and allocation of earnings and losses, the Valuation Date shall include the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants' Accounts during the Plan

Year, which may include any day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, or any stock exchange used by such agent, are open for business.

1.54 "Vested" means the nonforfeitable portion of any Account maintained on behalf of a Participant.

1.55 "Year of Service" means the computation period of twelve (12) consecutive months, herein set forth, and during which an Employee has completed at least 1,000 Hours of Service (unless a different number of Hours of Service is specified in the Adoption Agreement).

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). Unless otherwise elected in the Service Crediting Method Section of the Adoption Agreement, the succeeding computation periods shall begin on the anniversary of the Employee's employment commencement date. However, unless otherwise elected in the Adoption Agreement, if one (1) Year of Service or less is required as a condition of eligibility, then the computation period after the initial computation period shall shift to the current Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service, and subsequent computation periods shall be the Plan Year. If there is a shift to the Plan Year, an Employee who is credited with the number of Hours of Service to be credited with a Year of Service in both the initial eligibility computation period and the first Plan Year which commences prior to the first anniversary of the Employee's initial eligibility computation period will be credited with two (2) Years of Service for purposes of eligibility to participate.

If two (2) (or more) Years of Service are required as a condition of eligibility, a Participant will only have completed two (2) (or more) Years of Service for eligibility purposes upon completing two (2) or more consecutive Years of Service without an intervening 1-Year Break in Service.

For vesting purposes, and all other purposes not specifically addressed in this Section, the computation period shall be the period elected in the Service Crediting Method Section of the Adoption Agreement. If no election is made in the Service Crediting Method Section of the Adoption Agreement, then the computation period shall be the Plan Year.

In determining Years of Service for purposes of vesting under the Plan, Years of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

Years of Service and 1-Year Breaks in Service for eligibility purposes will be measured on the same eligibility computation period. Years of Service and 1-Year Breaks in Service for vesting purposes will be measured on the same vesting computation period.

Years of Service with any Affiliated Employer shall be recognized. Furthermore, Years of Service with any predecessor employer that maintained this Plan shall be recognized. Years of Service with any other employer shall be recognized as elected in the Adoption Agreement.

In the event the method of crediting service is amended from the elapsed time method to the Hour of Service method, an Employee will receive credit for Years of Service equal to:

(a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and

(b) In the computation period which includes the date of the amendment, a number of Hours of Service (using the Hours of Service equivalency method, if any, elected in the Adoption Agreement) to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

ARTICLE II
ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee (or Insurer) and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove one or more Trustees (or Insurers) and Administrators from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) **Appointment of Investment Manager.** Unless prohibited by the terms of the Trust agreement, the Employer may appoint, at its option, one or more Investment Managers, investment advisers, or other agents to provide investment direction to the Trustee (or Insurer) with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee (or Insurer) and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

(c) **Indemnity.** To the extent permitted by the Code, and unless otherwise specified in a separate agreement, the Employer will indemnify and hold harmless the Administrator, officers, directors, shareholders, employees, and agents of the Employer; the Plan; the Trustees, Fiduciaries, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, and other sanctions or compliance fees) arising out of or relating to the Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan. This indemnity provision shall continue to apply to the Employer with respect to the period the entity was maintaining this Plan, even if the Employer ceases to maintain the Plan.

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer may appoint one or more Administrators. If the Employer does not appoint an Administrator, the Employer will be the Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written or electronic acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. Upon the resignation or removal of an Administrator, the Employer may designate in writing a successor to this position.

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, then the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. If no such delegation is made by the Employer, then the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee (or Insurer) in writing of such action and specify the responsibilities of each Administrator. The Trustee (or Insurer) thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee (or Insurer) a written revocation of such designation.

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code §401(a). The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan and the powers necessary to carry out such duties as set forth under the terms of the Plan, including, but not limited to, the following:

(a) the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;

(b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;

(c) to compute, certify, and direct agents of the Plan respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

(d) to authorize and direct the Trustee (or Insurer) with respect to all discretionary or otherwise directed disbursements from the Trust Fund;

(e) to maintain all necessary records for the administration of the Plan;

(f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;

(g) to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;

(h) to compute and certify to the Employer and to the Trustee (or Insurer) from time to time the sums of money necessary or desirable to be contributed to the Plan;

(i) to consult with the Employer and agents of the Plan regarding the short and long-term liquidity needs of the Plan;

(j) to assist Participants regarding their rights, benefits, or elections available under the Plan; and

(k) to determine the validity of, and take appropriate action with respect to, any "qualified domestic relations order" received by it.

2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by applicable law.

2.6 APPOINTMENT OF ADVISERS

The Administrator may appoint counsel, specialists, advisers, agents (including nonfiduciary agents such as third party administrative services providers and recordkeepers) and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and, if applicable, to Plan Participants.

2.7 INFORMATION FROM EMPLOYER

The Employer shall supply full and timely information to the Administrator on all pertinent facts as the Administrator may require in order to perform its functions hereunder and the Administrator shall advise appropriate agents of the Plan of such of the foregoing facts as may be pertinent to the agent's duties with respect to the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

2.8 PAYMENT OF EXPENSES

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents such as third party administrative services providers and recordkeepers) appointed for the purpose of assisting the Administrator or Trustee (or Insurer) in carrying out the instructions of Participants as to the directed investment of their Accounts (if permitted) and other specialists and their agents and other costs of administering the Plan. If liquid assets of the Plan are insufficient to cover the fees of the Trustee (or Insurer) or the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

Expenses may be charged to Account. Unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee.

2.9 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.3, if there is more than one Administrator, then they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

2.10 CLAIMS PROCEDURES

(a) Non-ERISA provisions. Sections 2.10(a) and (b) apply unless (1) the Administrator has adopted other Plan provisions or other claims procedures that override all or a portion of the provisions set forth in this Plan Section 2.10, or (2) the Employer has elected in the Adoption Agreement to apply all or some of Subsections (c) – (g) below (which are based on provisions of the Employee Retirement Security Act even though ERISA does not apply to this Plan).

Any person who believes that he or she is entitled to a benefit under the Plan shall file with the Administrator a written notice of claim for such benefit within 45 days of such right accruing or shall forever waive entitlement to such benefit. Within 120 days after its receipt of such written notice of claim, the Administrator shall either grant or deny such claim provided, however, any delay on the part of the

Administrator is arriving at a decision shall not adversely affect benefits payable under a granted claim. The Administrator may, however, implement claims procedures in addition to those provided in this Plan. The implementation of such procedures shall not be considered a Plan amendment that affects an Employer's reliance on this pre-approved plan.

The Administrator and all persons determining or reviewing claims have full discretion to determine benefit claims under the Plan. Any interpretation, determination or other action of such persons shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the persons reviewing a claim shall be based only on such evidence presented to or considered by such persons at the time they made the decision that is the subject of review.

(b) Plan Administrator discretion; court review. The Administrator and all persons determining or reviewing claims have full discretion to determine benefit claims under the Plan. Any interpretation, determination or other action of such persons shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the persons reviewing a claim shall be based only on such evidence presented to or considered by such persons at the time they made the decision that is the subject of review.

(c) Initial Claim. Claims for benefits under the Plan may be filed in writing with the Administrator. Written or electronic notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) after the application is filed, or such period as is required by applicable law or Department of Labor regulation. Any electronic notification shall comply with the standards imposed by Department of Labor Regulation §2520.104b 1(c)(1)(i), (iii) and (iv) or any subsequent guidance. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

(d) Claims review. Any Employee, Former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.10 shall be entitled to request the Administrator to give further consideration to the claim by filing with the Administrator a written request. Such request, together with a written statement of the reasons why the claimant believes such claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in this Section 2.10(c). A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) of receipt of the appeal (unless there has been an extension of sixty (60) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts)). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. The communication may be written or electronic (provided the electronic communication complies with the standards imposed by Department of Labor Regulation §2520.104b 1(c)(1)(i), (iii) and (iv) or any subsequent guidance). Notwithstanding the preceding, to the extent any of the time periods specified in this Section are amended by law or Department of Labor regulation, then the time frames specified herein shall automatically be changed in accordance with such law or regulation.

(e) Deadline to file claim. To be considered timely under the Plan's claims procedures, a claim must be filed under Sections 2.10(c) or (d) above within one year after the claimant knew or reasonably should have known of the principal facts upon which the claim is based. Knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to the claimant for the purpose of applying this deadline.

(f) Exhaustion of administrative remedies. The exhaustion of the claims procedures is mandatory for resolving every claim and dispute arising under this Plan. As to such claims and disputes: (1) no claimant shall be permitted to commence any legal action to recover Plan benefits or to enforce or clarify rights under the Plan or under any other provision of law, whether or not statutory, until the claims procedures set forth in Subsections (a) and (b) above have been exhausted in their entirety; and (2) in any such legal action all explicit and all implicit determinations by the Administrator (including, but not limited to, determinations as to whether the claim, or a request for a review of a denied claim, was timely filed) shall be afforded the maximum deference permitted by law.

(g) Deadline to file action. No legal action to recover Plan benefits or to enforce or clarify rights under the Plan or under any other provision of law, whether or not statutory, may be brought by any claimant on any matter pertaining to this Plan unless the legal action is commenced in the proper forum before the earlier of: (1) thirty (30) months after the claimant knew or reasonably should have known of the principal facts on which the claim is based, or (2) six (6) months after the claimant has exhausted the claims procedure under this Plan. Knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to every claimant who is or claims to be a Beneficiary of the Participant or otherwise claims to derive an entitlement by reference to the Participant for purposes of applying the previously specified periods.

ARTICLE III
ELIGIBILITY

3.1 CONDITIONS OF ELIGIBILITY

An Eligible Employee shall be eligible to participate hereunder on the date such Employee has satisfied the conditions of eligibility, if any, elected in the Adoption Agreement.

3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **General rule.** An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 3.1 shall become a Participant effective as of the date elected in the Adoption Agreement.

(b) **Rehired Employee.** This Subsection only applies to the extent the Employer elects to apply the Break-in-Service rules in Appendix A to the Adoption Agreement. If the Break-in-Service rules do not apply, then a rehired Employee is treated as a new hire. If the Break-in-Service rules do apply, then if an Eligible Employee is not employed on the date determined pursuant to (a) above, but is reemployed before a 1-Year Break in Service has occurred, then such Eligible Employee shall become a Participant on the date of reemployment or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment. If such Employee incurs a 1-Year Break in Service, then eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

(c) **Recognition of predecessor service.** Unless specifically provided otherwise in the Adoption Agreement, an Eligible Employee who satisfies the Plan's eligibility requirement conditions by reason of recognition of service with a predecessor employer will become a Participant as of the day the Plan credits service with a predecessor employer or, if later, the date the Employee would have otherwise entered the Plan had the service with the predecessor employer been service with the Employer.

(d) **Noneligible to eligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(e) **Eligible to noneligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs a 1-Year Break in Service, eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5 (if applicable to the Plan).

3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan.

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Participant shall continue to vest in the Plan for each Year of Service (or Period of Service, if the elapsed time method is used) completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund in the same manner as Participants.

3.5 REHIRED EMPLOYEES AND 1-YEAR BREAKS IN SERVICE

(a) **Application of Break-in Service rules.** The Break-in-Service rules set forth in this Section only apply if the Employer elects to apply the Break-in-Service rules in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). If the Employer does not elect to apply the Break-in-Service rules, then rehired Employees are treated as new hires.

(b) **Rehired Participant/immediate re-entry.** If any Former Employee who had been a Participant is reemployed by the Employer, then the Employee shall become a Participant as of the reemployment date, unless the Employee is not an Eligible Employee or unless the Employee does not satisfy the eligibility conditions taking into account prior service to the extent such prior service is not disregarded pursuant to Section 3.5(e) below. If such prior service is disregarded, then the rehired Eligible Employee shall be treated as a new hire.

(c) **Rehired Eligible Employee who satisfied eligibility.** If any Eligible Employee had satisfied the Plan's eligibility requirements but, due to a severance of employment, did not become a Participant, then such Eligible Employee shall become a Participant as of the later of (1) the entry date on which he or she would have entered the Plan had there been no severance of employment, or (2) the date of his or her re-employment. Notwithstanding the preceding, if the rehired Eligible Employee's prior service is disregarded pursuant to Section 3.5(e) below, then the rehired Eligible Employee shall be treated as a new hire.

(d) **Rehired Eligible Employee who had not satisfied eligibility.** If any Eligible Employee who had not satisfied the Plan's eligibility requirements is rehired after severance from employment, then such Eligible Employee shall become a Participant in the Plan in accordance with the eligibility requirements set forth in the Adoption Agreement and the Plan. However, in applying any shift in an eligibility computation period, the Eligible Employee is not treated as a new hire unless prior service is disregarded in accordance with Section 3.5(e) below.

(e) **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions).** If the Employer elects in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to apply the "rule of parity" provisions, then if any Employee is reemployed after five (5) 1-Year Breaks in Service has occurred, Years of Service (or Periods of Service if the elapsed time method is being used) shall include Years of Service (or Periods of Service if the elapsed time method is being used) prior to the 5-Year Break in Service subject to the rules set forth below. The Employer may elect in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to make the provisions of this paragraph applicable for purposes of eligibility and/or vesting.

(1) In the case of a Former Employee who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service (or Periods of Service) before a period of 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equals or exceeds the greater of (i) five (5) or (ii) the aggregate number of pre-break Years of Service (or Periods of Service). Such aggregate number of Years of Service (or Periods of Service) will not include any Years of Service (or Periods of Service) disregarded under the preceding sentence by reason of prior 1-Year Breaks in Service;

(2) A Former Employee who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (1) above, shall participate in the Plan as of the date of reemployment, or if later, as of the date the Former Employee would otherwise enter the Plan pursuant to Sections 3.1 and 3.2 taking into account all service not disregarded.

(f) **Vesting after five (5) 1-Year Breaks in Service.** If the Employer elects in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to apply the Break-in-Service rules, then if f. a Participant incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of such Participant's Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Participant's Employer-derived Account balance in the Plan attributable to post-break service.

(g) **Waiver of allocation or contribution conditions.** If the Employer elects in the Adoption Agreement to waive allocations or contributions due to retirement (early or normal retirement), then a Participant shall only be entitled to one such waiver. Accordingly, if a Participant retires and allocation or contribution conditions are waived, then the Plan will not waive the allocation or contribution conditions if the Participant is rehired and then retires again.

3.6 ELECTION NOT TO PARTICIPATE

An Employee may, subject to the approval of the Employer, elect voluntarily not to participate in any component of the Plan before the Employee first becomes eligible to participate in any qualified plan (subject to Code §401(a)), or any other plan or arrangement of the employer that is described in Code section 219(g)(5)(A) (whether or not terminated) maintained by the Employer. Such election must be made upon inception of the Plan or such other plan or arrangement or at any time prior to the time the Employee first becomes eligible to participate under any such plan maintained by the Employer. The election not to participate must be irrevocable and communicated to the Employer, in writing, within a reasonable period of time before the date the Employee would have otherwise entered the Plan. Notwithstanding anything in this Section to the contrary, if any prior Plan document of this Plan contained a provision permitting an Employee to make a revocable election not to participate and an Employee made such revocable election not to participate while that prior Plan document was in effect, then such Employee's waiver shall continue to be in effect.

3.7 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer may take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System (i.e., Rev. Proc. 2018-52, Rev. Proc. 2019-19, or any subsequent guidance).

ARTICLE IV
CONTRIBUTION AND ALLOCATION

4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) **For a Money Purchase Plan.** All contributions made by the Employer will be made in cash. For each Plan Year, the Employer will contribute to the Plan the following:

(1) The amount of any mandatory Employee contributions and after-tax voluntary Employee contributions made by Participants; plus

(2) On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer will contribute the amount specified in the Adoption Agreement; plus

(3) If elected in the Adoption Agreement, a matching contribution equal to the amount specified in the Adoption Agreement of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution.

(b) **For a 401(a) Plan.** For each Plan Year, the Employer will (or may with respect to any discretionary contributions) contribute to the Plan:

(1) The amount of any mandatory Employee contributions and after-tax voluntary Employee contributions; plus

(2) If elected in the Adoption Agreement, a matching contribution equal to the amount specified in the Adoption Agreement of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution; plus

(3) If elected in the Adoption Agreement, an Employer contribution equal to a specified contribution or a discretionary amount determined each year by the Employer.

(c) **Frozen Plans.** The Employer may designate that the Plan is a frozen Plan at the Contribution Types Section of the Adoption Agreement. As a frozen Plan, the Employer will not make any Employer contributions with respect to Compensation earned after the date the Plan is frozen. In addition, once a Plan is frozen, no additional Employees shall become Participants.

(d) **Union Employees**. Regardless of any provision in this Plan to the contrary, Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining shall be eligible to participate in this Plan to the extent of employment covered by such agreement provided the agreement provides for coverage in the Plan. The benefits, including but not limited to, contributions, allocations and vesting, under this Plan shall be those set forth in the Adoption Agreement. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service and Compensation in each respective category are treated separately for purposes of the Plan.

(e) **Social Security Replacement Plan.** The Employer may elect under the Adoption Agreement to indicate its intention to qualify this Plan as a Social Security Replacement Plan under Code §3121(b)(7)(F). If the Employer makes the election to qualify the Plan as a Social Security Replacement Plan, the Plan will allocate a minimum contribution amount (Employer and Employee Contributions) of seven and one-half percent (7.5%) of Compensation. The Plan will consider each Participant a member of a retirement system that provides benefits comparable to the benefits he or she would have received under Social Security. In the case of part-time, seasonal and temporary Employees, the benefit will be nonforfeitable.

4.2 TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

4.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS

(a) **Separate accounting.** The Administrator shall establish and maintain an Account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate any contributions as follows:

(1) **Money Purchase Pension Plan.** For a Money Purchase Plan:

(i) The Employer's contribution shall be allocated to each Participant's Account in the manner set forth in Section 4.1 herein and as specified in the Adoption Agreement.

(ii) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied.

(2) **401(a) Plan.** For a 401(a) Plan (which is a profit sharing plan within the meaning of Code §401(a)):

(i) The Employer's contribution shall be allocated to each Participant's Account in accordance with the allocation method that corresponds with the elections in the Adoption Agreement. The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the allocation shall be made in accordance with the elections in the Adoption Agreement.

(ii) Notwithstanding the preceding provision, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied.

(c) **Gains or losses.** Except as otherwise provided in Section 4.10 with respect to Participant Directed Accounts, as of each Valuation Date, before allocation of any Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund (exclusive of assets segregated for distribution) shall be allocated in accordance with such rules and procedures that are established by the Administrator and that are applied in a uniform and nondiscriminatory manner based upon the investments of the Trust Fund and the Participants' accounts to which the net income is allocated. For purposes of this Section, the term "net income" means the net of any interest, dividends, unrealized appreciation and depreciation, capital gains and losses, and investment expenses of the Trust Fund determined on each Valuation Date. However, Participants' accounts which have been segregated for investment purposes (including any Participant Directed Accounts) will only have the net income earned thereon allocated thereto. Policy dividends or credits will be allocated to the Participant's Account for whose benefit the Policy is held.

Recapture account. The Administrator in its discretion may use a "Recapture Account" to pay non settlor Plan expenses and may allocate funds in the "Recapture Account" (or excess funds therein after payment of Plan expenses) as earnings or as otherwise permitted by applicable law. The Administrator will exercise its discretion in a reasonable, uniform and nondiscriminatory manner. A "Recapture Account" is an account designated to receive amounts which a Plan service provider receives in the form of 12b 1 fees, sub transfer agency fees, shareholder servicing fees or similar amounts (also known as "revenue sharing"), which are received by the service provider from a source other than the Plan and which the service provider may remit to the Plan.

Late trading and market timing settlement. In the event the Plan becomes entitled to a settlement from a mutual fund or other investment relating to late trading, market timing or other activities, the Administrator will allocate the settlement proceeds to Participants and Beneficiaries in accordance with Department of Labor Field Assistance Bulletin 2006-01 or other applicable law.

(d) **Contracts.** Participants' Accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends or interest received on Contracts.

(e) **Forfeitures.** Forfeitures must be disposed of no later than the last day of the Plan Year following the Plan Year in which the Forfeiture occurs. The Employer may direct the Administrator to use Forfeitures to satisfy any contribution that may be required pursuant to Section 6.10 or to pay any Plan expenses. With respect to a Money Purchase Plan, any remaining Forfeitures will be disposed of in accordance with the elections in the Adoption Agreement. With respect to all other plans, the Employer must direct the Administrator to use any remaining Forfeitures in accordance with any combination of the following methods, including a different method based on the source of such Forfeitures. Forfeitures may be:

(1) Added to any Employer discretionary contribution and allocated in the same manner

(2) Used to reduce any Employer contribution

(3) Added to any Employer matching contribution and allocated as an additional matching contribution

(4) Allocated to all Participants in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year

If Forfeitures are allocated to Participants (rather than used to reduce Employer contributions) then the Employer must also direct the Administrator as to which Participants are eligible to share in such allocation.

(f) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

4.4 MAXIMUM ANNUAL ADDITIONS

(a) **Calculation of "annual additions."**

(1) If a Participant does not participate in, and has never participated in another qualified plan maintained by the "employer," or a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer," or an individual medical benefit account (as defined in Code §415(l)(2)) maintained by the "employer," or a simplified employee pension (as defined in Code §408(k)) maintained by the "employer" which provides "annual additions," the amount of "annual additions" which may be credited to the Participant's Accounts for any Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in this Plan. If the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount," the amount contributed or allocated will be reduced so that the "annual additions" for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the Administrator shall determine the "maximum permissible amount" for each Participant for such Limitation Year on the basis of the Participant's actual 415 Compensation for such Limitation Year.

(b) **"Annual additions" if a Participant is in more than one plan.**

(1) Except as provided in Subsection (c) below, this Subsection applies if, in addition to this Plan, a Participant is covered under another "employer" maintained qualified defined contribution plan, welfare benefit fund (as defined in Code §419(e)), individual medical benefit account (as defined in Code §415(l)(2)), or simplified employee pension (as defined in Code §408(k)), which provides "annual additions," during any Limitation Year. The "annual additions" which may be credited to a Participant's Accounts under this Plan for any such Limitation Year shall not exceed the "maximum permissible amount" reduced by the "annual additions" credited to a Participant's Accounts under the other plans and welfare benefit funds, individual medical benefit accounts, and simplified employee pensions for the same Limitation Year. If the "annual additions" with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the "employer" are less than the "maximum permissible amount" and the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts under this Plan would cause the "annual additions" for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the "annual additions" under all such plans and welfare benefit funds for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants. If the "annual additions" with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical benefit accounts and simplified employee pensions in the aggregate are equal to or greater than the "maximum permissible amount," no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the Administrator shall determine the "maximum permissible amount" for each Participant for such Limitation Year on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(4) If, pursuant to Section 4.4(b)(2), a Participant's "annual additions" under this Plan and such other plans would result in an "excess amount" for a Limitation Year, the "excess amount" will be deemed to consist of the "annual additions" last allocated, except that "annual additions" attributable to a simplified employee pension will be deemed to have been allocated first,

followed by "annual additions" to a welfare benefit fund or individual medical benefit account, and then by "annual additions" to a plan subject to Code §412, regardless of the actual allocation date.

(5) If an "excess amount" was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the "excess amount" attributed to this Plan will be the product of:

(i) the total "excess amount" allocated as of such date, times

(ii) the ratio of (A) the "annual additions" allocated to the Participant for the Limitation Year as of such date under this Plan to (B) the total "annual additions" allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(c) **Coverage under another plan.** If the Participant is covered under another qualified defined contribution plan maintained by the "employer," "annual additions" which may be credited to the Participant's Accounts under this Plan for any Limitation Year will be limited in accordance with Section 4.4(b), unless the "employer" provides other limitations in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(d) **Time when "annual additions" credited.** An "annual addition" is credited to the Account of a Participant for a particular Limitation Year if it as allocated to the Participant's Account under the Plan as of any date within that Limitation Year. However, an amount is not deemed allocated as of any date within a Limitation Year if such allocation is dependent upon participation in the Plan as of any date subsequent to such date.

For purposes of this subparagraph, "employer" contributions are treated as credited to a Participant's Account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or Fiscal Year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(e) **Definitions.** For purposes of this Section, the following terms shall be defined as follows:

(1) **"Annual additions"** means the sum credited to a Participant's Accounts for any Limitation Year of (a) "employer" contributions, (b) Employee contributions (except as provided below), (c) Forfeitures, (d) amounts allocated to an individual medical benefit account, as defined in Code §415(l)(2), which is part of a pension or annuity plan maintained by the "employer," (e) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer" and (f) allocations under a simplified employee pension. Except, however, the Compensation percentage limitation referred to in paragraph (e)(5)(ii) below shall not apply to: (1) any contribution for medical benefits (within the meaning of Code §419A(f)(2)) after separation from service which is otherwise treated as an "annual addition," or (2) any amount otherwise treated as an "annual addition" under Code §415(l)(1).

(i) **Restorative payments.** "Annual additions" for purposes of Code §415 and this Section shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered "annual additions."

(ii) **Other amounts.** "Annual additions" for purposes of Code §415 and this Section shall not include: (A) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (B) Rollover contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (C) Repayments of loans made to a Participant from the Plan; and (D) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(2) **"Defined contribution dollar limitation"** means $56,000 (or the amount as adjusted under Code §415(d)).

(3) **"Employer"** means, for purposes of this Section, the Employer that adopts this Plan and all Affiliated Employers.

(4) **"Excess amount"** means the excess of the Participant's "annual additions" for the Limitation Year over the "maximum permissible amount."

(5) **"Maximum permissible amount"** means, except to the extent permitted under this Plan and Code §414(v), the maximum "annual addition" that may be contributed or allocated to a Participant's Accounts under the Plan for any Limitation Year, which shall not exceed the lesser of:

(i) the "defined contribution dollar limitation," or

(ii) one hundred percent (100%) of the Participant's 415 Compensation for the Limitation Year.

The 415 Compensation Limitation referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code §§401(h) or 419A(f)(2)) which is otherwise treated as an "annual addition."

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the "maximum permissible amount" will not exceed the "defined contribution dollar limitation" multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12).

(f) **Special rules.**

(1) **Aggregation of plans**. For purposes of applying the limitations of Code §415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the "employer" (or a "predecessor employer") under which the Participant receives "annual additions" (including voluntary employee contribution accounts in a defined benefit plan, mandatory contributions to a defined benefit plan, individual medical benefit accounts under§401(h), key employee accounts under a welfare benefit plan described in §419, and simplified employee pensions under§408(k)) of the employer or a predecessor employer, whether or not terminated, will be treated as one defined contribution plan for purposes of the limitations under§ 415(c). Where the employer is a member of a controlled group of corporations or commonly controlled trades or businesses, or a member of an affiliated service group, within the meaning of §§414(b), (c) or (m) and §415(g) and (h), the plan must provide that all such employers are treated as a single employer for purposes of the Plan's application of the §415 limitations. Notwithstanding the preceding, multiemployer plans are not aggregated with other multiemployer plans for purposes of §415. For purposes of this Section:

(i) A former "employer" is a "predecessor employer" with respect to a participant in a plan maintained by an "employer" if the "employer" maintains a plan under which the participant had accrued a benefit while performing services for the former "employer", but only if that benefit is provided under the plan maintained by the "employer". For this purpose, the "formerly affiliated plan" rules in Regulation §1.415(f)-1(b)(2) apply as if the "employer" and "predecessor employer" constituted a single employer under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately prior to the "cessation of affiliation" (and as if they constituted two, unrelated employers under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately after the "cessation of affiliation") and "cessation of affiliation" was the event that gives rise to the "predecessor employer" relationship, such as a transfer of benefits or plan sponsorship.

(ii) With respect to an "employer" of a Participant, a former entity that antedates the "employer" is a "predecessor employer" with respect to the Participant if, under the facts and circumstances, the "employer" constitutes a continuation of all or a portion of the trade or business of the former entity.

(2) **Break-up of an affiliated employer or an affiliated service group.** For purposes of aggregating plans for Code §415, a "formerly affiliated plan" of an "employer" is taken into account for purposes of applying the Code §415 limitations to the "employer," but the "formerly affiliated plan" is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an "employer" is a plan that, immediately prior to the "cessation of affiliation," was actually maintained by one or more of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)), and immediately after the "cessation of affiliation," is not actually maintained by any of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single "employer" under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the "employer" under the employer affiliation rules of Regulation §1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(3) **Mid-year aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code §415(f) and the Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code §415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no "annual additions" are credited to the Participant's Account after the date on which the plans are required to be aggregated.

4.5 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS

Notwithstanding any provision of the Plan to the contrary, if the "annual additions" (as defined in Section 4.4) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2018-52, Rev. Proc. 2019-19, or any superseding guidance.

4.6 ROLLOVERS

(a) **Acceptance of "rollovers" into the Plan.** If elected in the Adoption Agreement and with the consent of the Administrator, the Plan may accept a "rollover," provided the "rollover" will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The amounts rolled over shall be separately accounted for in a "Participant's Rollover Account." A Participant's Rollover Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees. In addition, for purposes of this Section the term Participant shall also include Former Employees elected in the Adoption Agreement. Regardless of whether new loans are permitted, if the Plan permits rollovers, the Administrator may, in a uniform and nondiscriminatory manner, accept rollovers of loans into this Plan if the terms of such loans meet the requirements of being definite, have a reasonable rate of interest, and/or have a definite repayment period (e.g., an asset purchase acquisition whereby the Employer may choose to accept the rollover of Participant loans from a prior employer in a uniform and nondiscriminatory manner).

(b) **Treatment of "rollovers" under the Plan.** Amounts in a Participant's Rollover Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (c) below. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.

(c) **Distribution of "rollovers."** At such time as the conditions set forth in the Adoption Agreement have been satisfied, the Administrator, at the election of the Participant, shall direct the distribution of up to the entire amount credited to the Rollover Account maintained on behalf of such Participant. Any distribution of amounts held in a Participant's Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6. Furthermore, unless otherwise elected in the Adoption Agreement, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **"Rollovers" maintained in a separate account.** The Administrator may direct that "rollovers" made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(e) **Limits on accepting "rollovers."** Prior to accepting any "rollovers" to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally, to limit the source of "rollover" contributions that may be accepted by the Plan.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) A "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code or any other federally enacted legislation.

(2) An "eligible retirement plan" means an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code §401(a) which is exempt from tax under Code §501(a)), an annuity plan described in Code §403(a), an eligible deferred compensation plan described in Code §457(b) which is maintained by an eligible employer described in Code §457(e)(1)(A), and an annuity contract described in Code §403(b).

(g) **Pre-Participation Rollovers.** If an Eligible Employee makes a Rollover Contribution to the Plan prior to satisfying the Plan's eligibility conditions or prior to reaching his or her Entry Date, then the Administrator will treat the Employee as a limited Participant (as described in Rev. Rul. 96 48). A limited Participant does not share in the Plan's allocation of Employer Contributions nor Forfeitures until the Employee actually becomes a Participant in the Plan.

4.7 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

(a) **Transfers into this Plan.** With the consent of the Administrator, amounts may be transferred (within the meaning of Code §414(l)) to this Plan from other tax qualified plans under Code §401(a), provided the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax-exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require an opinion of counsel that the amounts to be transferred meet the requirements of this Section. The amounts transferred shall be set up in a separate account herein referred to as a "Participant's Transfer Account." Furthermore, for vesting purposes, the Participant's Transfer Account may be treated as a separate "Participant's Account."

(b) **Accounting of transfers.** Amounts in a Participant's Transfer Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (d) below, provided the restrictions of Subsection (c) below and Section 6.16 are satisfied. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination.

(c) **Distribution of plan–to-plan transfer amounts.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Participant's Transfer Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6. Furthermore, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **Segregation.** The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(e) **Pre-Participation Transfers.** The Administrator has the discretion to accept a Transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions or prior to reaching the Entry Date in a uniform and nondiscretionary manner. If the Plan accepts such a direct transfer of plan assets, then the Administrator will treat the Employee as a limited Participant pursuant to Section 4.6(g).

4.8 MANDATORY EMPLOYEE CONTRIBUTIONS

(a) **Mandatory Employee contributions.** An Employer may elect in the Adoption Agreement to provide for mandatory Employee contributions. If the Employer elects to provide for such contributions, each Participant, will make a mandatory Employee contribution in the amount elected in the Adoption Agreement. Alternatively, the Employer may elect to provide a range of mandatory Employee contribution percentages from which the Participant may choose to contribute. Under this option, the Employee, if required as a condition of employment, must make an irrevocable election to contribute a percentage of his or her Compensation no later than his or her effective date of participation. If not required as a condition of employment, such mandatory Employee contribution election shall be made prior to participation in the Plan. During the period of the Participant's participation in the Plan, the Participant may not revoke the election and receive cash in lieu of the contribution, nor may the Participant change the amount of the mandatory Employee contribution. Amounts attributable to mandatory Employee contributions shall be fully Vested.

(b) **Employer pick-up contribution.** Unless otherwise elected in the Adoption Agreement, the Employer will "pick-up" the mandatory Employee contributions and will pay the mandatory Employee contributions to the Plan as an Employer contribution. This provision is effective only after the Employer provides for the treatment of the mandatory Employee contributions as described in this paragraph, through a person authorized to take such action, and evidenced in writing by minutes of a meeting, resolution, ordinance, or other formal action by the Employer, which will effectuate the "pick-up" provision. Furthermore, as of the date of the "pick-up," Participants are not permitted to opt-out of the "pick-up" or to receive the mandatory Employee contributions directly instead of having them paid to the Plan. Mandatory Employee contributions that are "picked-up" by the Employer are excludible from the Employee's gross income.

4.9 AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **After-tax voluntary Employee contributions.** If elected in the Adoption Agreement, each Participant may, in accordance with procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to this Plan. Such contributions must generally be paid to the Trustee (or Insurer) within a reasonable period of time after being received by the Employer. An after-tax voluntary Employee contribution is any contribution made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is separately accounted for under the Plan.

(b) **Full vesting.** The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(c) **Distribution at any time.** A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

(d) **Used to provide benefits.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Participant's Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

4.10 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed investment options allowed.** If permitted by the Administrator and the terms of the Trust, Participants may direct the Trustee (or Insurer) as to the investment of all or a portion of their individual Account balances in accordance with the Plan's procedures. Participants may direct the Trustee (or Insurer), in writing (or in such other form which is acceptable to the Trustee (or Insurer)), to invest their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the Account of any Participant that is subject to investment direction of such Participant will be considered a Participant Directed Account.

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of gains or losses.** As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent the assets in a Participant Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent the assets in a Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains on and losses from such assets shall be made on a separate and distinct basis.

(e) **Plan will follow investment directions.** Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee (or Insurer) that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Discretionary Trustee (or Insurer) reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Discretionary Trustee (or Insurer). Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider) or force majeure. The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(f) **Other documents required by directed investments.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to Participants in one or more documents (or in any other form, including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

4.11 QUALIFIED MILITARY SERVICE

(a) **USERRA.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code §414(u)(4).

(b) **Benefit accrual.** If the Employer elects in the Adoption Agreement to apply this Subsection, then effective as of the date specified in the Adoption Agreement, for benefit accrual purposes, the Plan treats an individual who becomes Totally and Permanently disabled while performing "qualified military service" (as defined in Code §414(u)) with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), on the day preceding Total and Permanent Disability and terminated employment on the actual date of death or Total and Permanent Disability.

The Plan will determine the amount of after-tax voluntary Employee contributions of an individual treated as reemployed under this Section for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual after-tax voluntary Employee contributions for the lesser of: (1) the 12-month period of service with the Employer immediately prior to "qualified military service" (as defined in Code §414(u)); or (2) the actual length of continuous service with the Employer.

(c) **Death benefits.** If a Participant dies while performing "qualified military service" (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of "qualified military service" but including vesting credit for such period and any other ancillary life insurance or other survivor benefits) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's "qualified military service" as service for vesting purposes, as though the Participant had resumed employment under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA) immediately prior to the Participant's death.

(d) **Military Differential Pay.** The following applies with respect to Military Differential Pay: (1) an individual receiving Military Differential Pay is treated as an Employee of the Employer making the payment; (2) the Military Differential Pay is treated as 415 Compensation (and Compensation unless otherwise elected in the Adoption Agreement); and (3) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding Plan provisions) by reason of any contribution or benefit which is based on the Military Differential Pay. The Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any matching contributions, attributable to Military Differential Pay.

(e) **Deemed Severance.** Notwithstanding Subsection (b)(1) above, if elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), a Participant who performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than thirty (30) days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not attributable to Employer contributions to a money purchase pension plan. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an after-tax voluntary Employee contribution during the six (6) month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision, then the other Plan provision will control and the six (6) month suspension will not apply.

4.12 INSTRUCTIONS TO ADMINISTRATOR AND NOTIFICATION TO PARTICIPANTS

For Plan Years beginning after the end of the Plan Year in which this document is first adopted, if a "Flexible Discretionary Match" contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to *allocate* a matching contribution to Participants) and the Employer makes a "Flexible Discretionary Match" to the Plan, the Employer must provide the Plan Administrator or Trustee written instructions describing (1) how the "Flexible Discretionary Match" formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the "Flexible Discretionary Match" formula applies, and (3) if applicable, a description of each business location or business classification subject to separate "Flexible Discretionary Match" allocation formulas. Such instructions must be provided no later than the date on which the "Flexible Discretionary Match" is made to the Plan. A summary of these instructions must be communicated to Participants who receive an allocation of the "Flexible Discretionary Match" no later than 60 days following the date on which the last "Flexible Discretionary Match" contribution is made to the Plan for the Plan Year.

Solely for purposes of this Section, a matching contribution is to be considered as being a "Flexible Discretionary Match" contribution unless the Employer has provided a definitely determinable allocation formula for the matching contribution on the Adoption Agreement. In order to be definitely determinable, then the components of the allocation formula described in the preceding sentence must be specified on the Adoption Agreement and cannot themselves be discretionary. Thus, regardless of whether the contribution formula for the matching contribution is fixed or discretionary, the provisions of the preceding paragraph apply unless the amount to be allocated to the Participant for the Plan Year can be determined without any discretion on the part of the Employer.

ARTICLE V
VALUATIONS

5.1 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee (or Insurer), as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee (or Insurer) shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and may deduct all expenses for which the Trustee (or Insurer) has not yet been paid by the Employer or the Trust Fund. The Trustee (or Insurer), when determining the net worth of the assets, may update the value of any shares held in a Participant Directed Account by reference to the number of shares held on behalf of the Participant, priced at the market value as of the Valuation Date.

5.2 METHOD OF VALUATION

Except as otherwise provided in the Trust agreement, in determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee (or Insurer) to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee, the Administrator (if the Trustee is a directed Trustee), or Insurer may appraise such assets itself (assuming it has the appropriate expertise), or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

ARTICLE VI
DETERMINATION AND DISTRIBUTION OF BENEFITS

6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the severance of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or if elected in the Adoption Agreement, the attainment of Normal Retirement Date without severance of employment with the Employer (subject to Section 6.11), or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant (unless a distribution is mandatory under the other terms of the Plan), of the Participant's entire Vested interest in the Plan in accordance with Section 6.5.

6.2 DETERMINATION OF BENEFITS UPON DEATH

(a) **100% vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the deceased Participant's Vested accounts to the Participant's Beneficiary.

(b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining Vested amounts credited to the accounts of such deceased Participant to such Participant's Beneficiary.

(c) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) **Beneficiary designation.** Each Participant must designate a Beneficiary on a form and in such manner as provided by the Administrator.

(e) **Spousal consent to alternative Beneficiary.** This Subsection applies if the Employer has elected in the Adoption Agreement either to apply the Joint and Survivor Annuity rules or to provide that a Participant's Spouse is the Beneficiary unless the Spouse consents to an alternative Beneficiary. Unless otherwise elected in the manner prescribed in Section 6.6, the Beneficiary of the Pre-Retirement Survivor Annuity (or if applicable, the entire death benefit) shall be the Participant's surviving Spouse. Except, however, the Participant may designate a Beneficiary other than the Spouse if:

(1) the Participant and the Participant's Spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, and the Spouse has waived the right to be the Participant's Beneficiary,

(2) the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code §414(p) which provides otherwise),

(3) the Participant has no Spouse, or

(4) the Spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the IRS) notice of such revocation or change with the Administrator. However, the Participant's Spouse must again consent in writing (or in such other form as permitted by the IRS) to any change in Beneficiary unless the original consent acknowledged that the Spouse had the right to limit consent only to a specific Beneficiary and that the Spouse voluntarily elected to relinquish such right.

(f) **Beneficiary if no Beneficiary elected by Participant.** In the event no valid designation of Beneficiary exists, or if the Beneficiary with respect to a portion of a Participant's death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such portion of the death benefit will be paid in the following order of priority, unless the Employer specifies a different order of priority in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to:

(1) The Participant's surviving Spouse;

(2) The Participant's issue, per stirpes;

(3) The Participant's surviving parents, in equal shares; or

(4) The Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's "designated Beneficiary" (or if there is no "designated Beneficiary," to the Beneficiary's estate). For purposes of these provisions, and with respect to any Beneficiary designations, adopted children shall be treated as children.

(g) **Divorce revokes spousal Beneficiary designation.** Notwithstanding anything in this Section to the contrary, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) or prohibited by applicable State law, if a Participant has designated the Spouse as a Beneficiary, then a divorce decree that relates to such Spouse shall revoke the Participant's designation of the Spouse as a Beneficiary unless the decree or a "qualified domestic relations order" (within the meaning of Code §414(p)) provides otherwise or a subsequent Beneficiary designation is made.

(h) **Insured death benefit.** If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the premium which was or otherwise would have been used for such purpose.

(i) **Plan terms control.** In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. In the event of a Participant's Total and Permanent Disability, the Participant's entire Vested interest in the Plan will be distributable and may be distributed in accordance with the provisions of Sections 6.5 and 6.7.

6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on severance of employment.** If a Participant's employment with the Employer and any Affiliated Employer is severed for any reason other than death, Total and Permanent Disability, or attainment of the Participant's Retirement Date, then such Participant shall be entitled to such benefits as are provided herein.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

Regardless of whether distributions in kind are permitted, in the event the amount of the Vested portion of the Terminated Participant's Combined Account equals or exceeds the fair market value of any insurance Contracts, the Administrator may direct the Trustee (or Insurer), when agreed to by the Terminated Participant, to assign, transfer, and set over to such Terminated Participant all Contracts on such Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with the provisions of Section 6.5. In the event that the Terminated Participant's Vested portion does not at least equal the fair market value of the Contracts, if any, the Terminated Participant may pay over to the Trustee (or Insurer) the sum needed to make the distribution equal to the value of the Contracts being assigned or transferred, or the Trustee (or Insurer), pursuant to the Participant's election, may borrow the cash value of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Combined Account and then assign the Contracts to the Terminated Participant.

Notwithstanding the above, unless otherwise elected in the Adoption Agreement, if the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed $5,000 (or such lower amount as elected in the Adoption Agreement), the Administrator shall direct that the entire Vested benefit be paid to such Participant in a single lump-sum as soon as practical without regard to the consent of the Participant, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. A Participant's Vested benefit shall not include (1) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B) and (2) if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account. If a mandatory distribution is made pursuant to this paragraph and such distribution is greater than $1,000 and the Participant does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Participant in a "direct rollover" in accordance with Section 6.14 or to receive the distribution directly, then the Administrator shall transfer such amount to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) designated by the Administrator. However, if the Participant elects to receive or make a "direct rollover" of such amount, then the Administrator shall direct the Trustee (or Insurer) to cause the entire Vested benefit to be paid to such Participant in a single lump sum, or make a "direct rollover" pursuant to Section 6.14, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. The Administrator may establish a procedure as to whether a Participant who fails to make an affirmative election with respect to a mandatory distribution of $1,000 or less is treated as having made or not made a "direct rollover" election. For purposes of determining whether the $1,000 threshold set forth in this paragraph is met, the mandatory distribution includes amounts in a Participant's Rollover Account. For purposes of determining whether the $5,000 threshold in this paragraph is met, a Participant's Rollover Account is taken into account unless otherwise elected in the Adoption Agreement.

(b) **Vesting schedule.** The Vested portion of any Participant's Account shall be a percentage of such Participant's Account determined on the basis of the Participant's number of Years of Service (or Periods of Service if the elapsed time method is elected) according to the vesting schedule specified in the Adoption Agreement. However, a Participant's entire interest in the Plan shall be non-forfeitable upon the Participant's Normal Retirement Age (if the Participant is employed by the Employer on or after such date). In addition, Employee contributions (voluntary and mandatory) and contributions for sick leave/vacation leave conversions shall be fully Vested.

6.5 DISTRIBUTION OF BENEFITS

(a) **Forms of distributions.** Subject to the Joint and Survivor Annuity requirements in Subsection (e) below (if the Employer elects to apply such provisions), the Administrator, pursuant to the election of the Participant, shall direct the distribution to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods which are permitted pursuant to the Adoption Agreement.

(1) One lump-sum payment in cash or in property, provided that if a distribution of property is permitted, it shall be limited to property that is specifically allocated and identifiable with respect to such Participant.

(2) Partial withdrawals.

(3) Payments over a period certain in monthly, quarterly, semi-annual, or annual cash installments. The period over which such payment is to be made shall not extend beyond the earlier of the Participant's life expectancy (or the joint life expectancy of the Participant and the Participant's designated Beneficiary). Once payments have begun, a Participant may elect to accelerate the payments (reduce the term and increase payments).

(4) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(b) **Consent to distributions.** Benefits may not be paid without a Participant's consent if the value of the Participant's Accounts exceed the dollar threshold specified in the Adoption Agreement. If the value of the Participant's Accounts does not exceed such threshold, then the Administrator may only distribute such benefit in a lump-sum. For purposes of this Subsection, the Participant's Accounts shall not include, if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account.

(c) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity Contract, shall be made in accordance with the requirements of Section 6.8.

(d) **Annuity Contracts.** All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or Spouse shall comply with all of the requirements of this Plan.

(e) **Qualified Joint and Survivor Annuity.**

(1) The provisions of this Subsection (e) apply if the Employer elects to apply the Joint and Survivor Annuity rules in the Adoption Agreement. A Participant who is married on the Annuity Starting Date and who does not die before the Annuity Starting Date shall receive the value of all Plan benefits in the form of a Joint and Survivor Annuity. The Joint and Survivor Annuity is an annuity that commences immediately and shall be equal in value to a single life annuity. Such joint and survivor benefits following the Participant's death shall continue to the Spouse during the Spouse's lifetime at a rate equal to either fifty percent (50%), seventy-five percent (75%) (or, sixty-six and two-thirds percent (66 2/3%) if the Insurer used to provide the annuity does not offer a joint and seventy-five percent (75%) survivor annuity), or one hundred percent (100%) of the rate at which such benefits were payable to the Participant. Unless otherwise elected in the Adoption Agreement, a joint and fifty percent (50%) survivor annuity shall be considered the designated qualified Joint and Survivor Annuity and the normal form of payment for the purposes of this Plan. However, the Participant may, without spousal consent, elect an alternative Joint and Survivor Annuity, which alternative shall be equal in value to the designated qualified Joint and Survivor Annuity. An unmarried Participant shall receive the value of such Participant's benefit in the form of a life annuity. Such unmarried Participant, however, may elect to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the Joint and Survivor Annuity by a married Participant, but without fulfilling the spousal consent requirement. The Participant may elect to have any annuity provided for in this Section distributed upon the attainment of the "earliest retirement age" under the Plan. The "earliest retirement age" is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(2) Any election to waive the Joint and Survivor Annuity must be made by the Participant in writing (or in such other form as permitted by the IRS) during the election period and be consented to in writing (or in such other form as permitted by the IRS) by the Participant's Spouse. If the Spouse is legally incompetent to give consent, the Spouse's legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the Spouse expressly permits designations by the Participant without the requirement of further consent by the Spouse). Such Spouse's consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no Spouse, the Spouse cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to by such Participant's Spouse may be revoked by the Participant in writing (or in such other form as permitted by the IRS) without the consent of the Spouse at any time during the election period. A revocation of a prior election shall cause the Participant's benefits to be distributed as a Joint and Survivor Annuity. The number of revocations shall not be limited. Any new election must comply with the requirements of this paragraph. A former Spouse's waiver shall not be binding on a new Spouse.

(3) The election period to waive the Joint and Survivor Annuity shall be the one-hundred eighty (180) day period ending on the Annuity Starting Date.

(4) For purposes of this Section and Section 6.6, Spouse or surviving Spouse means the Spouse or surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or surviving Spouse and a current Spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a "qualified domestic relations order" as described in Code §414(p).

(5) With regard to the election, except as otherwise provided herein, the Administrator shall, in accordance with Regulation §1.417(a)(3)-1, provide to the Participant no less than thirty (30) days and no more than one-hundred eighty (180) days before the Annuity Starting Date a written (or such other form as permitted by the IRS) explanation of:

(i) the terms and conditions of the qualified Joint and Survivor Annuity and the "qualified optional survivor annuity" that is payable in lieu of the qualified Joint and Survivor Annuity,

(ii) the Participant's right to make and the effect of an election to waive the Joint and Survivor Annuity,

(iii) the right of the Participant's Spouse to consent to any election to waive the Joint and Survivor Annuity, and

(iv) the right of the Participant to revoke such election, and the effect of such revocation.

(6) Any distribution provided for in this Section may commence less than thirty (30) days after the notice required by Code §417(a)(3) is given provided the following requirements are satisfied:

(i) the Administrator clearly informs the Participant that the Participant has a right to a period of thirty (30) days after receiving the notice to consider whether to waive the Joint and Survivor Annuity and to elect (with spousal consent) a form of distribution other than a Joint and Survivor Annuity;

(ii) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant;

(iii) the Annuity Starting Date is after the time that the explanation of the Joint and Survivor Annuity is provided to the Participant. However, the Annuity Starting Date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below; and

(iv) distribution in accordance with the affirmative distribution election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant.

(f) **Qualified Joint and Survivor Annuity but not the normal form.** The provisions of this Section apply if the Employer has elected in the Adoption Agreement to apply the Joint and Survivor Annuity requirement to a Participant, but the Qualified Joint and Survivor Annuity is not the normal form of distribution.

(1) The Joint and Survivor Annuity provisions of Section 6.5(e) shall not apply if a Participant does not elect an annuity form of distribution. Furthermore, Subsection (3) below shall not apply if a Participant elects an annuity form of distribution.

(2) Notwithstanding anything in Sections 6.2 and 6.6 to the contrary, upon the death of a Participant, the automatic form of distribution will be a lump-sum rather than a Qualified Pre-Retirement Survivor Annuity. Furthermore, the Participant's Spouse will be the Beneficiary of the Participant's entire Vested interest in the Plan unless an election is made to waive the Spouse as Beneficiary. The other provisions in Section 6.2 shall be applied by treating the death benefit in this Subsection as though it is a Qualified Pre-Retirement Survivor Annuity.

(3) Except to the extent otherwise provided in this Section, the provisions of Sections 6.2 and 6.5 regarding spousal consent shall be inoperative with respect to this Plan.

(4) The distribution may commence less than thirty (30) days after the notice required under Regulation §1.411(a)-11(c) is given, provided:

(1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(2) the Participant, after receiving the notice, affirmatively elects a distribution.

6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) **Consent.** If the value of the death benefit derived from Employer and Employee contributions does not exceed $5,000, the Administrator shall direct the distribution of such amount to the Participant's Beneficiary in a single lump-sum as soon as practicable. If the value exceeds $5,000, an immediate distribution of the entire amount may be made to the Beneficiary, provided such Beneficiary consents to the distribution.

(b) **Forms of distribution.** Death benefits may be paid to a Participant's Beneficiary in one of the following optional forms of benefits subject to the rules specified in Section 6.8 and the elections made in the Adoption Agreement. Such optional forms of distributions may be elected by the Participant. However, if no optional form of distribution was elected by the Participant prior to death, then the Participant's Beneficiary may elect the form of distribution.

(1) One lump-sum payment in cash or in property that is allocated to the Accounts of the Participant at the time of the distribution.

(2) Partial withdrawals.

(3) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity Contract for a term certain (with no life contingencies) providing for such payment. After periodic installments commence, the Beneficiary shall have the right to reduce the period over which such periodic installments shall be made, and the cash amount of such periodic installments shall be adjusted accordingly.

(4) In the form of an annuity over the life expectancy of the Beneficiary.

(c) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.

(d) **Payment to a child.** For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving Spouse if the amount becomes payable to the surviving Spouse when the child reaches the age of majority.

(e) **Voluntary Contribution Account.** In the event that less than one hundred percent (100%) of a Participant's interest in the Plan is distributed to such Participant's Spouse, the portion of the distribution attributable to the Participant's Voluntary Contribution Account shall be in the same proportion that the Participant's Voluntary Contribution Account bears to the Participant's total interest in the Plan.

(f) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Section 6.8(a)(4).

6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. Notwithstanding anything in the Plan to the contrary, unless a Participant otherwise elects, payments of benefits under the Plan will be begin not later than the later of the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer. The failure of a Participant to request a distribution shall be deemed to be an election to defer the commencement of payment of any benefit until the time otherwise permitted under the Plan.

6.8 REQUIRED MINIMUM DISTRIBUTIONS

(a) **General rules**

(1) **Effective Date.** Subject to the good faith interpretation standard, the requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and will take precedence over any inconsistent provisions of this Plan.

(2) **Requirements of Treasury Regulations incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).

(3) **Limits on distribution periods.** As of the first "distribution calendar year," distributions to a Participant may only be made in accordance with the selections made in the Form of Distributions Section of the Adoption Agreement. If such distributions are not made in a single-sum, then they may only be made over one of the following periods: (i) the life of the Participant, (ii) the joint lives of the Participant and a "designated Beneficiary," (iii) a period certain not extending beyond the "life expectancy" of the Participant, or (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a "designated Beneficiary."

(4) **TEFRA Section 242(b)(2) elections.**

(i) Notwithstanding the other provisions of this Section, other than the Spouse's right of consent afforded under the Plan, distributions may be made on behalf of any Participant, including a five percent (5%) owner, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):

(A) The distribution by the Plan is one which would not have disqualified such Plan under Code §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(B) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(C) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(D) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(E) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

(ii) A distribution upon death will not be covered by the transitional rule of this Subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

(iii) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(A) and (i)(E) of this Subsection.

(iv) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code §401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(v) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(5) **Good faith interpretation standard.** In applying any provision of this section, the Plan will apply a reasonable good faith interpretation of Code §401(a)(9).

(b) **Time and manner of distribution**

(1) **Required beginning date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date."

(2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows as elected in the Distributions Upon Death Section of the Adoption Agreement (or if no election is made, then the Beneficiary may elect either the lifetime method or the five-year method and if the Beneficiary makes no election, the five-year method shall apply):

(i) **Lifetime method (Spouse).** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," then, except as otherwise provided herein, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(ii) **Lifetime method (non-Spouse).** If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," then, except as provided in Section 6.8(b)(3) below, distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) **Five-year method.** If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death or if otherwise elected pursuant to the Adoption Agreement with respect to a "designated Beneficiary," the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) **Death of Spouse.** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary" and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 6.8(b)(2), other than Section 6.8(b)(2)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 6.8(b)(2) and Section 6.8(b)(3), unless Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the Participant's "required beginning date." If Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "required beginning date," as of the first "distribution calendar year" distributions will be made in accordance with Sections 6.8(c) and 6.8(d) and only in a form of distribution provided in Section 6.5 or 6.6, as applicable. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Regulations thereunder.

(c) **Required minimum distributions during Participant's lifetime**

(1) **Amount of required minimum distribution for each "distribution calendar year."** During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following:

(i) the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table set forth in Regulation §1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(ii) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's Spouse, the quotient obtained by dividing the "Participant's account balance" by the number in the Joint and Last Survivor Table set forth in Regulation §1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the "distribution calendar year."

(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

(d) **Required minimum distributions after Participant's death**

(1) **Death on or after date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as follows:

(A) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," the remaining "life expectancy" of the surviving Spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For "distribution calendar years" after the year of the surviving Spouse's death, the remaining "life expectancy" of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) **No "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) **Death before date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** Except as provided in Section 6.8(b)(3), if the Participant dies before the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as provided in Section 6.8(d)(1).

(ii) **No "designated Beneficiary."** If the Participant dies before the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) **Death of surviving Spouse before distributions to surviving Spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i), this Section 6.8(d)(2) will apply as if the surviving Spouse were the Participant.

(e) **Definitions.** For purposes of this Section, the following definitions apply:

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the "designated Beneficiary" under Code §401(a)(9) and Regulation §1.401(a)(9)-4.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under Section 6.8(b). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date." The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year."

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation §1.401(a)(9)-9.

(4) "Participant's account balance" means the Participant's account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of the dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(a) **Reduction for QLACs**. A Participant's account balance is reduced by any QLACs (as defined below). This paragraph applies only to QLACs purchased on or after July 2, 2014.

(b) **Definition of QLAC.** A QLAC is qualifying longevity annuity contract as defined in A-17 of Regulation §1.401(a)(9)-6. Pursuant to such Regulation, a QLAC is an annuity contract that is purchased from an insurance company for a Participant and that, in accordance with the rules of application of paragraph (c) below, satisfies each of the following requirements:

(1) The premiums paid with respect to the contract on a date do not exceed the lesser of the following amounts, determined in accordance with the provisions of paragraph (b) of A-17 of Regulation §1.401(a)(9)-6.

(a) An amount equal to the excess of $125,000 (as adjusted under paragraph (d)(2) of A–17 of Regulation §1.401(a)(9)-6), over the sum of the premiums paid before that date with respect to the contract, and the premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the Participant under the Plan, or any other plan, annuity, or account described in Code §401(a), 403(a), 403(b), or 408 or eligible governmental plan under §457(b).

(b) An amount equal to the excess of 25% of the Participant's account balance under the Plan (including the value of any QLAC held under the Plan for the Participant) as of that date, over the sum of the premiums paid before that date with respect to the contract, and the premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is held or was purchased for the Participant under the Plan.

(2) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month next following the eighty-fifth (85^{th}) anniversary of the Employee's birth;

(3) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of paragraph (c) of A-17 of Regulation §1.401(a)(9)-6 (other than the requirement that annuity payments commence on or before the required beginning date (RBD));

(4) The contract does not make available any commutation benefit, cash surrender right, or other similar feature except as otherwise permitted under A-17 of Regulation §1.401(a)(9)-6;

(5) No benefits are provided under the contract after the death of the employee other than the benefits described in paragraph (c) of A-17 of Regulation §1.401(a)(9)-6;

(6) Except as otherwise permitted under A-17 of Regulation §1.401(a)(9)-6, when the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and

(7) The contract is not a variable contract under Code §817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.

(c) **Rules of application relating to premiums.**

(1) Reliance on representations. For purposes of the limitation on premiums described in paragraphs (b)(1) and (2) above, unless the Administrator has actual knowledge to the contrary, the Administrator may rely on an Employee's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in such paragraphs, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the Employer or an entity that is treated as a single employer with the Employer under Code §414(b), (c), (m), or (o).

(2) Consequences of excess premiums. If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b)(1)(a) above, then the contract is not a QLAC beginning on the date that premium payment is made unless the excess premium is returned to the non-QLAC portion of the Participant's account in accordance with paragraph (d)(1)(ii)(B) of A-17 of Regulation §1.401(a)(9)-6. If the contract fails to be a QLAC, then the value of the contract may not be disregarded under paragraph (a) above as of the date on which the contract ceases to be a QLAC.

If the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the Participant's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under paragraph (b)(1)(a) above at any time, and the value of the contract will not be included in the employee's account balance under paragraph (a) above. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the Participant's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the Participant's account balance for that calendar year must be increased to reflect that excess premium in the same manner as a Participant's account balance is increased under Regulation §1.401(a)(9)–7, A–2 to reflect a rollover received after the last valuation date.

(3) Application of 25-percent limit. For purposes of the 25% limit under paragraph (b)(1)(b) above, a Participant's account balance on the date on which premiums for a contract are paid is the account balance as of the last valuation date preceding the date of the premium payment, adjusted as follows. The account balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid and decreased for distributions made from the account during that period.

(d) **Dollar and age limitations subject to adjustments.** In the case of calendar years beginning on or after January 1, 2015, the $125,000 amount under paragraph (b)(1)(a) will be adjusted at the same time and in the same manner as the limits are adjusted under Code §415(d), except that the base period shall be the calendar quarter beginning July 1, 2013, and any increase under this paragraph that is not a multiple of $10,000 will be rounded to the next lowest multiple of $10,000. The maximum age set forth in paragraph (b)(2) may be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin and made available by the Superintendent of Documents.

If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (b)(1)(a) or the age limitation in paragraph (b)(2), any subsequent adjustment that is made pursuant to this paragraph (d) will not cause the contract to become a QLAC.

(5) "Required beginning date" means, except as otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.

6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL

If, in the opinion of the Administrator, a Participant or Beneficiary entitled to a distribution is not able to care for his her affairs because of a mental condition, a physical condition, or by reason of age in the case of a minor, Administrator shall direct the distribution to the Participant's or Beneficiary's valid power of attorney, court appointed guardian, or any other person authorized under state law to receive the benefit (including a custodian under a Uniform Transfers or Gifts to Minors Act), upon furnishing evidence of such status satisfactory to the Administrator. The Administrator and the Trustee (or Insurer) do not have any liability with respect to payments so made and neither the Administrator nor the Trustee (or Insurer) has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

6.10 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). Before treating any Participant as being missing, the Administrator must conduct a reasonable and diligent search for the Participant, using one or more of search methods the Plan Administrator determines are appropriate under the circumstances, such as the methods suggested by DOL Field Assistance Bulletin 2014-01. Such search methods include:

(1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail;
(2) check with the administrator of other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts;
(3) identify and contact the Participant's Designated Beneficiary;
(4) use one or more free internet search tools;
(5) attempt contact via email or telephone, or
(6) use proprietary internet search tools, commercial locator services, credit reporting agencies, information brokers, or other search methods. Regarding search methods (2) and (3) above, if the Plan Administrator encounters privacy concerns, the Plan Administrator may request that the Employer or other plan fiduciary (under (2)), or the Designated Beneficiary (under (3)), contact the Participant or forward a letter requesting that the Participant contact the Plan Administrator.

In addition, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed $1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) or use the PBGC Missing Participant Program, or any successor program, at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture and prior to the time the Plan has been terminated, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Section 6.14(b)(1) may be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

6.11 IN-SERVICE DISTRIBUTION

If elected in the Adoption Agreement, at such time as the conditions set forth in the Adoption Agreement have been satisfied, then the Administrator, at the election of a Participant who has not severed employment with the Employer, shall direct the distribution of up to the entire Vested amount then credited to the Accounts as elected in the Adoption Agreement maintained on behalf of such Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5. Furthermore, if an in-service distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's in-service distribution from such accounts. The Administrator may adopt a policy imposing frequency limitations or other reasonable administrative conditions on in-service distributions made pursuant to this Section.

6.12 DISTRIBUTION FOR HARDSHIP

(a) **Hardship events.** If elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year to an amount necessary to satisfy the Participant's immediate and heavy financial need, determined in accordance with the remaining provisions of this Section. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Such distributions may also be made from those Accounts from which such distribution are authorized by the remaining provisions of this Section. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. Withdrawal under this Section shall be authorized only if the distribution is for an immediate and heavy financial need. The Administrator will determine whether there is an immediate and heavy financial need based on the facts and circumstances. An immediate and heavy financial need includes, but is not limited to, a distribution for one of the following:

(1) Expenses for (or necessary to obtain) medical care (as defined in Code §213(d));

(2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code §152, and without regard to Code §152(d)(1)(B));

(4) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code §152, and without regard to Code §§152(b)(1), (b)(2), and (d)(1)(B));

(5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or

(6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) **Beneficiary-based distribution.** If elected in the Adoption Agreement, then effective as of the date specified in the Adoption Agreement, a Participant's hardship event includes an immediate and heavy financial need of the Participant's "primary Beneficiary under the Plan," that would constitute a hardship event if it occurred with respect to the Participant's Spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Section, a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan (by the Participant or pursuant to Section 6.2(d)) and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(c) **Other limits and conditions.** If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.

(d) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

6.13 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

All benefits provided to a Participant in this Plan shall be subject to the rights afforded to any Alternate Payee under a "qualified domestic relations order." Furthermore, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) a distribution to an Alternate Payee shall be permitted if such distribution is authorized by a "qualified domestic relations order," even if the affected Participant has not reached the "earliest retirement age." For the purposes of this Section, "qualified domestic relations order" and "earliest retirement age" shall have the meanings set forth under Code §414(p). For purposes of this Section, however, a distribution that is made pursuant to a domestic relations order which meets the requirements of Code §414(p)(1)(A)(i) will be treated as being made pursuant to a "qualified domestic relations order."

A domestic relations order that otherwise satisfies the requirements for a "qualified domestic relations order" will not fail to be a "qualified domestic relations order": (i) solely because the order is issued after, or revises, another domestic relations order or "qualified domestic relations order"; or (ii) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after the Participant's death.

6.14 DIRECT ROLLOVERS

(a) **Right to direct rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." However, if less than the entire amount of the "eligible rollover distribution" is being paid directly to an "eligible retirement plan," then the Administrator may require that the amount paid directly to such plan be at least $500.

(b) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) **Eligible rollover distribution.** An "eligible rollover distribution" means any distribution described in Code §402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" "designated Beneficiary," or for a specified period of ten (10) years or more; (b) any distribution to the extent such distribution is required under Code §401(a)(9); (c) any hardship distribution; (d) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); (e) any loans that are treated as deemed distributions under Code §72(p) which are not also an offset distribution; (f) the costs of life insurance coverage (P.S. 58 costs); (g) any other distributions described in Regulation §1.402(c)-2; and any other distribution reasonably expected to total less than $200 during a year.

Notwithstanding the above, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to:

(i) a traditional individual retirement account or annuity described in Code §408(a) or (b) (a "traditional IRA")

(ii) for taxable years beginning after December 31, 2006, a Roth individual account or annuity described in Code §408A (a "Roth IRA"), or

(iii) a qualified defined contribution plan or an annuity contract described in Code §401(a) or Code §403(b), respectively, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) **Eligible retirement plan.** An "eligible retirement plan" is a "traditional IRA," a "Roth IRA," a qualified trust (an employees' trust) described in Code §401(a) which is exempt from tax under Code §501(a), an annuity plan described in Code §403(a), an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code §403(b), and for distributions made after December 18, 2015, a SIMPLE IRA to the extent permitted under Code §408(p)(1)(B), that accepts the "distributee's" "eligible rollover distribution." The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is an Alternate Payee. If any portion of an "eligible rollover distribution" is attributable to payments or distributions from a designated Roth account, an "eligible retirement plan" with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual. In the case of a "distributee" who is a non-Spouse designated Beneficiary, (i) the "direct rollover" may be made only to a traditional or Roth individual retirement account or an annuity described in Code §408(b) ("IRA") that is established on behalf of the designated non-Spouse Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11), and (ii) the determination of any required minimum distribution required under Code §401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18.

(3) **Distributee.** A "distributee" includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving Spouse and the Employee's or Former Employee's Spouse or former Spouse who is the Alternate Payee, are "distributees" with regard to the interest of the Spouse or former Spouse.

(4) **Direct rollover.** A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the "distributee."

(c) **Participant notice.** A Participant entitled to an "eligible rollover distribution" must receive a written explanation of the right to a "direct rollover," the tax consequences of not making a "direct rollover," and, if applicable, any available special income tax elections. The notice must be provided no less than thirty (30) days and no more than one-hundred eighty (180) days before the Annuity Starting Date. The "direct rollover" notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than $200.

(d) **Non-Spouse Beneficiary rollover right.** A non-Spouse Beneficiary who is a "designated Beneficiary" under Code §401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion an "eligible rollover distribution" to an IRA the Beneficiary establishes for purposes of receiving the distribution. If the Participant's named Beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a "designated Beneficiary."

6.15 RESTRICTIONS ON DISTRIBUTION OF ASSETS TRANSFERRED FROM A MONEY PURCHASE PLAN

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's retirement, death, Total and Permanent Disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code §414(l), to this Plan from a money purchase pension plan qualified under Code §401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary Employee contributions or to a direct or indirect rollover contribution). A Participant may not obtain an in-service distribution with respect to such transferred amounts prior to the earlier of the Participant's Normal Retirement Age or attainment of age 62.

6.16 CORRECTIVE DISTRIBUTIONS

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under the IRS' Employee Plans Compliance Resolution System or any other voluntary compliance programs established by the IRS.

6.17 SERVICE CREDIT PURCHASES

The Administrator, upon Participant request, may direct the transfer of all or a portion of the Participant's Account to a governmental defined benefit plan (as defined in Code §414(d)) in which he or she participates for the purchase of permissive service credit (as defined in Code §415(n)(3)(A)).

6.18 UNCASHED CHECKS

Subject to the provisions of Section 6.10, the Plan Administrator operationally may dispose of an uncashed distribution from the Plan to a lost Participant at the time and in the manner described in this Section). Prior to doing so, the Plan Administrator must make reasonable and diligent efforts to contact the lost Participant, including using such search methods the Plan Administrator determines are appropriate under the circumstances. At the discretion of the Administrator, Plan distributions that remain uncashed, and which the Administrator chooses not to reinvest in the Plan may be: (1) voluntarily remitted to a State unclaimed property department, but no sooner than the appropriate state dormancy period has expired; or (2) deposited for the benefit of the lost Participant either to a: (a) bank account, or (b) individual retirement account if the original distribution was an eligible rollover distribution.

For purposes of this Section 6.18, a distribution is "uncashed" if it remains uncashed by the "cash-by" date on the check or in an accompanying notice, e.g., a date prescribed by the bank or the Plan. This "cash-by" date must be at least forty-five (45) days after the check is issued. If there is no prescribed "cash-by" date, then the amount is considered uncashed if it is not cashed by the check's stale date.

6.19 HEALTH INSURANCE PAYMENTS FOR PUBLIC SAFETY OFFICERS

An "eligible retired public safety officer" may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the "eligible retired public safety officer" otherwise would receive and include in income. The Plan will pay such deducted amounts directly to pay "qualified health insurance premiums" ed in Code §402(l). Any election made under this Plan must conform to the requirements of Code §402(l). A "qualified retired public safety officer" is a public safety officer (as defined in §1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C 3796b(9)(A)) who, by reason of disability or attainment of Normal Retirement Age, is separated from service as a public safety officer with the Employer. "Qualified health insurance premiums" means the premiums for coverage for the "eligible retired public safety officer," his or her Spouse, and dependents (as defined in Code §152), by an accident or health plan or qualified long-term care insurance contract (as defined in Code §7702B(b)).

ARTICLE VII
TRUSTEE AND CUSTODIAN

7.1 CONFLICT WITH PLAN

In the event of any conflicts between the provisions of this Plan and the Trust agreement, the provisions of this Plan control.

7.2 POWERS AND DUTIES OF CUSTODIAN

Subject to the terms of the Trust agreement, the Employer may appoint a Custodian of the Plan assets. The duties of the Custodian are those set forth in the agreement with the Custodian. Any reference in the Plan to a Trustee also is a reference to a Custodian unless the Employer has appointed a Custodian separate from the Trustee or the context of the Plan indicates otherwise.

7.3 LIFE INSURANCE

(a) **Permitted insurance.** To the extent not prohibited under the terms of the Trust agreement, the Trustee (or Insurer), in accordance with operational procedures of the Administrator, shall ratably apply for, own, and pay all premiums on Contracts on the lives of the Participants or, in the case of a 401(a) Plan, on the life of a member of the Participant's family or on the joint lives of a Participant and a member of the Participant's family. Furthermore, if a Contract is purchased on the joint lives of the Participant and another person and such other person predeceases the Participant, then the Contract may not be maintained under this Plan. Any initial or additional Contract purchased on behalf of a Participant shall have a face amount of not less than $1,000, an amount set forth in the Administrator's procedures, or the limitation of the Insurer, whichever is greater. If a life insurance Contract is to be purchased for a Participant, then the aggregate premium for ordinary life insurance for each Participant must be less than 50% of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance is purchased, then the aggregate premium must be 25% or less of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. If both term insurance and ordinary life insurance are purchased, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed 25% of the aggregate Employer contributions and Forfeitures allocated to the Participant's Combined Account. Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply, in the case of a 401(a) Plan, to the portion of the Participant's Account that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. In addition, amounts transferred to this Plan in accordance with Section 4.6(f)(1)(ii) or (iii) and a Participant's Voluntary Contribution Account may be used to purchase Contracts without limitation. Thus, amounts that are not subject to the limitations contained herein may be used to purchase life insurance on any person in whom a Participant has an insurable interest or on the joint lives of a Participant and any person in whom the Participant has an insurable interest, and without regard to the amount of premiums paid to purchase any life insurance hereunder.

(b) **Contract conversion at retirement.** The Administrator must direct the Trustee (or Insurer) to distribute any Contracts to the Participant or convert the entire value of the Contracts at or before retirement into cash or provide for a periodic income so that no portion of such value may be used to continue life insurance protection beyond the Participant's actual retirement date.

(c) **Limitations on purchase.** No life insurance Contracts shall be required to be obtained on an individual's life if, for any reason (other than the nonpayment of premiums) the Insurer will not issue a Contract on such individual's life.

(d) **Proceeds payable to plan.** The Trustee (or Insurer) must be the owner of any life insurance Contract purchased under the terms of this Plan. The Contract must provide that the proceeds will be payable to the Trustee (or Insurer); however, the Trustee (or Insurer) shall be required to pay over all proceeds of the Contract to the Participant's "designated Beneficiary" in accordance with the distribution provisions of Article VI as directed by the Administrator. A Participant's Spouse will be the "designated Beneficiary" pursuant to Section 6.2, unless a qualified election has been made in accordance with Sections 6.5 and 6.6 of the Plan, if applicable. Under no circumstances shall the Trust retain any part of the proceeds that are in excess of the cash surrender value immediately prior to death. However, the Trustee (or Insurer) shall not pay the proceeds in a method that would violate the requirements of the Retirement Equity Act of 1984, as stated in Article VI of the Plan, or Code §401(a)(9) and the Regulations thereunder. In the event of any conflict between the terms of this Plan and the terms of any insurance Contract purchased hereunder, the Plan provisions shall control.

(e) **No responsibility for act of Insurer.** The Employer, the Administrator and the Trustee shall not be responsible for the validity of the provisions under a Contract issued hereunder or for the failure or refusal by the Insurer to provide benefits under such Contract. The Employer, Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the Contract or which renders the Contract invalid or unenforceable in whole or in part.

7.4 LOANS TO PARTICIPANTS

(a) **Permitted Loans.** To the extent not prohibited under the terms of the Trust agreement, the Administrator may, in the Administrator's sole discretion, make loans to Participants. If loans are permitted, then the following shall apply: (1) loans shall be made available to all Participants on a reasonably equivalent basis; (2) loans shall bear a reasonable rate of interest; (3) loans shall be adequately secured; and (4) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Participant loan shall exceed the Participant's Vested interest in the Plan. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees.

(b) **Loan program.** The Administrator shall be authorized to establish a Participant loan program to provide for loans under the Plan. In order for the Administrator to implement such loan program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

(1) the identity of the person or positions authorized to administer the Participant loan program;

(2) a procedure for applying for loans;

(3) the basis on which loans will be approved or denied;

(4) limitations, if any, on the types and amounts of loans offered;

(5) the procedure under the program for determining a reasonable rate of interest;

(6) the types of collateral which may secure a Participant loan; and

(7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

(c) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations. Notwithstanding anything in the Plan's loan policy to the contrary, if a loan is accelerated due to a Participant's termination of employment, then the Plan may direct that the loan note be transferred or directly rolled over to another plan that will accept the transfer or rollover of the note.

(d) **Loans subject to Plan terms.** Notwithstanding anything in this Section to the contrary, if this is an amendment and restatement of an existing Plan, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

7.5 PLAN TO PLAN TRANSFERS

Notwithstanding any other provision contained in this Plan and to the extent not prohibited under the terms of the Trust agreement, the Administrator may direct the Trustee to transfer the interest, if any, of a Participant to another trust forming part of a pension, profit sharing, or stock bonus plan that meets the requirements of Code §401(a), provided that the trust to which such transfers are made permits the transfer to be made and further provided that the terms of the transferee plan properly allocates the funds in each account to a transferee account that preserves all the required features and restrictions applicable to such account under this Plan. However, the transfer of amounts from this Plan to a nonqualified foreign trust is treated as a distribution and the transfer of assets and liabilities from this Plan to a plan that satisfies Section 1165 of the Puerto Rico Code is also treated as distribution from the transferor plan.

ARTICLE VIII
AMENDMENT, TERMINATION AND MERGERS

8.1 AMENDMENT

(a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. However, any amendment that affects the rights, duties or responsibilities of the Trustee (or Insurer) or Administrator may only be made with the Trustee's (or Insurer's) or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee (or Insurer) shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee (or Insurer) hereunder.

(b) **Permissible amendments.** The Employer amend the Plan to accomplish any of the following items without affecting reliance on the opinion letter: (1) change the choice of options in the Adoption Agreement or Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), (2) add certain sample or model amendments published by the Internal Revenue Service or other required good-faith amendments where the IRS has provided that their adoption will not cause the Plan to be treated as an individually designed plan, (3) add a list of any protected benefits" which must be preserved, (4) adjust the limitations under Code §§415, 402(g), 401(a)(17) and 414(q)(1)(B) to reflect annual cost-of-living increases, and (5) change the pre-approved plan Provider's name. "Provider" pursuant to this Section 8 means the entity that contracts with the mass submitter to provide the Basic Plan Document and Adoption Agreement for use by the Employer or, in the alternative, the mass submitter that provides such documents directly to its clients. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under Code §412(c), will no longer participate in this pre-approved plan and this Plan will be considered to be an individually designed plan for purposes of reliance. A Plan amendment does not include an amendment or substitution of the Trust.

(c) **Provider amendments.** The Employer (and every Participating Employer) expressly delegates authority to the Provider, the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted this pre-approved plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the pre-approved Plan as amended qualifies under Code §401(a) (unless a ruling or determination is not required by the IRS). The Provider will amend the Plan Documents from time to time in accordance with this Section 8.1(c). For purposes of this Section, the mass submitter shall be recognized as the agent of the Provider. If the Provider does not adopt any amendment made by the mass submitter, it will no longer be identical to, or a minor modifier of, the mass submitter plan.

(d) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

8.2 TERMINATION

(a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee (or Insurer) and Administrator written notice of such termination. The Employer has no obligation or liability whatsoever to maintain the Plan for any specific length of time and may terminate the Plan or discontinue contributions under the Plan at any time without liability hereunder for any such discontinuance. Upon any full or partial termination or upon the complete discontinuance of the Employer's Contributions to the Plan (in the case of a Profit Sharing Plan), all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner that is consistent with and satisfies the provisions of Section 6.5. Distributions to a Participant shall be made in cash (or in property if permitted in the Adoption Agreement) or through the purchase of irrevocable nontransferable deferred commitments from the Insurer.

8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan provided the benefits which would be received by a Participant of this Plan, in the event of a termination of the plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation.

ARTICLE IX
MISCELLANEOUS

9.1 EMPLOYER ADOPTIONS

(a) **Method of adoption.** Any organization may become the Employer hereunder by executing the Adoption Agreement.

(b) **Separate affiliation.** Except as otherwise provided in this Plan, the affiliation of the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

9.2 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

9.3 ALIENATION

(a) **General rule.** Subject to the exceptions provided below and as otherwise permitted by the Code, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) **Exception for loans.** Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Section 7.4. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such portion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's interest in the Plan. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's interest in the Plan, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Section 2.10.

(c) **Exception for QDRO.** Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code §414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984.

9.4 PLAN COMMUNICATIONS, INTERPRETATION AND CONSTRUCTION

(a) **Applicable law.** This Plan shall be construed and enforced according to the Code, and the laws of the state or commonwealth in which the Employer's principal office is located (unless otherwise designated in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), other than its laws respecting choice of law, to the extent not pre-empted by federal law.

(b) **Administrator's discretion.** The Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Administrator makes under the Plan is final and binding upon any affected person. The Administrator must exercise all of its Plan powers and discretion, and perform all of its duties, in a uniform manner.

(c) **Communications.** All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Administrator (or, as applicable, the Trustee or Insurer) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period unless such actions are contrary to applicable law.

(d) **Evidence.** Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Administrator, Trustee and Insurer are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(e) **Plan terms binding.** The Plan is binding upon all parties, including but not limited to, the Employer, Trustee, Insurer, Administrator, Participants and Beneficiaries.

(f) **Parties to litigation.** Except as otherwise provided by applicable law, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust or any fiduciary. Any final judgment (not subject to further appeal) entered in any such proceeding will be binding upon all parties, including the Employer, the Administrator, Trustee, Insurer, Participants and Beneficiaries.

(g) **Fiduciaries not insurers.** The Trustee, Administrator and the Employer in no way guarantee the Plan assets from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Plan. The liability of the Employer, the Administrator and the Trustee to make any distribution from the Trust at any time and all times is limited to the then available assets of the Trust.

(h) **Construction/severability.** The Plan, the Adoption Agreement, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with other applicable law. To the extent permissible under applicable law, any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

(i) **Uniformity.** All provisions of this Plan shall be interpreted and applied in a uniform manner.

(j) **Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

9.5 GENDER, NUMBER AND TENSE

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

9.6 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee (or Insurer), the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee (or Insurer), the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

9.7 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make a contribution under a mistake of fact, the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee (or Insurer) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

9.8 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

9.9 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the Insurer, an Insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator or Trustee and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator or Trustee. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

9.10 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, including those referenced in Section 6.9, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee (or Insurer) and the Employer.

9.11 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

9.12 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification is made by the time prescribed by law or such later date as the Secretary of Treasury may prescribe, the Commissioner of the Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code §§401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee (or Insurer) shall be discharged from all further obligations. If the disqualification relates to a Plan amendment, then the Plan shall operate as if it had not been amended. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this pre-approved plan and will be considered an individually designed plan.

9.13 PAYMENT OF BENEFITS

Except as otherwise provided in the Plan, benefits under this Plan shall be paid, subject to Sections 6.11 and 6.12, only upon death, Total and Permanent Disability, normal or early retirement, severance of employment, or termination of the Plan.

9.14 ELECTRONIC MEDIA

The Administrator may use any electronic medium to give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under applicable law. A Participant or a Participant's Spouse, to the extent authorized by the Administrator, may use any electronic medium to make or provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent permissible under applicable law. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof as permitted under applicable law.

Notwithstanding the foregoing, any Participant or Beneficiary notices and consent that are required pursuant to the Code must satisfy Regulation §1.401(a)-21.

9.15 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a) or to correct a fiduciary breach under state or local law. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and Employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. Furthermore, the Employer may make corrective contributions pursuant to this Section regardless of whether the Plan otherwise permits such contribution source. In addition, the Plan is authorized to recover benefits from Participants or Beneficiaries that have been improperly distributed.

9.16 NONTRUSTEED PLANS

If the Plan is funded solely with Contracts, then notwithstanding Sections 9.7 and 9.12, no Contract will be purchased under the Plan unless such Contract or a separate definite written agreement between the Employer and the Insurer provides that no value under Contracts providing benefits under the Plan or credits determined by the Insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such Contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

If this Plan is funded by individual Contracts that provide a Participant's benefit under the Plan, such individual Contracts shall constitute the Participant's Account balance. If this Plan is funded by group Contracts, under the group annuity or group insurance Contract, premiums or other consideration received by the Insurer must be allocated to Participants' Accounts under the Plan.

ARTICLE X
PARTICIPATING EMPLOYERS

10.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer, any Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer (a participation agreement). In the event a Participating Employer is not an Affiliated Employer, then the provisions of Article XI shall apply rather than the provision of this Article XI.

10.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) **Permissible variations of participation agreement.** The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the Employer shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the Employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the Employer's Adoption Agreement. To the extent that the participation agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the Employer. If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer."

(b) **Holding and investing assets.** The Trustee (or Insurer) may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof. However, the assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Employer or Participating Employer who contributed such assets.

(c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

10.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

10.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a severance of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

10.5 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES

Any contribution and/or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer and shall be allocated only among the Participants eligible to share in the contribution and Forfeiture allocation of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed.

On the basis of the information furnished by the Administrator, the Trustee (or Insurer) shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee (or Insurer) may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee (or Insurer) thereof.

10.6 AMENDMENT

Any Participating Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. Any such amendment is effective and binding upon existing Participating Employers.

10.7 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer that is an Affiliated Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee (or Insurer). The Trustee (or Insurer) shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new trustee (or insurer) or custodian as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees. If no successor is designated, the Trustee (or Insurer) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the Employees of such Participating Employer.

10.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

ARTICLE XI
MULTIPLE EMPLOYER PROVISIONS

11.1 ELECTION AND OVERRIDING EFFECT

If a Participating Employer that is not an Affiliated Employer adopts this Plan, then the provisions of this Article XI shall apply to each Participating Employer as of the Effective Date specified in its participation agreement and supersede any contrary provisions in the basic Plan document or the Adoption Agreement. If this Article XI applies, then the Plan shall be a multiple employer plan as described in Code §413(c). In this case, the Employer and each Participating Employer acknowledge that the Plan is a multiple employer plan subject to the rules of Code §413(c) and the Regulations thereunder, and specific annual reporting requirements.

11.2 DEFINITIONS

The following definitions shall apply to this Article XI and shall supersede any conflicting definitions in the Plan:

(a) **Employee.** "Employee" means any common law employee, Leased Employee or other person the Code treats as an employee of a Participating Employer for purposes of the Participating Employer's qualified plan. Either the Adoption Agreement or a participation agreement to the Adoption Agreement may designate any Employee, or class of Employees, as not eligible to participate in the Plan.

(b) **Lead Employer.** "Lead Employer" means the signatory Employer to the Adoption Agreement execution page, and does not include any Affiliated Employer or Participating Employer. The "lead Employer" has the same meaning as the Employer for purposes of making Plan amendments and other purposes regardless of whether the "lead Employer" is also a Participating Employer under this Article XI. The "lead Employer" may execute a Participation Agreement setting forth elections which are specific to the "lead Employer".

11.3 PARTICIPATING EMPLOYER ELECTIONS

The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the "lead Employer" shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the "lead Employer's" Adoption Agreement. To the extent that the Adoption Agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the "lead Employer." If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer."

11.4 TESTING

The Administrator shall apply the Code §415 limitation in Section 4.4 for the Plan as a whole.

11.5 COMPENSATION

(a) **Separate determination.** A Participant's Compensation shall be determined separately for each Participating Employer for purposes of allocations under Article IV.

(b) **Joint status.** For all Plan purposes, including but not limited to determining the Code §415 limits in Section 4.4, Compensation includes all Compensation paid by or for any Participating Employer.

11.6 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service or had a severance from employment.

11.7 COOPERATION AND INDEMNIFICATION

(a) **Cooperation.** Each Participating Employer agrees to timely provide all information the Administrator deems necessary to insure the Plan is operated in accordance with the requirements of the Code and will cooperate fully with the "lead Employer," the Plan, the Plan fiduciaries and other proper representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(b) **Indemnity.** Each Participating Employer will indemnify and hold harmless the Administrator, the "lead Employer" and its subsidiaries; officers, directors, shareholders, employees, and agents of the "lead Employer"; the Plan; the Trustees, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, other sanctions or compliance fees and penalties) arising out of or relating to the Participating Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Participating Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan. This indemnity provision shall continue to apply to a Participating Employer with respect to the period such entity was a Participating Employer, even if the Participating Employer withdraws or is removed pursuant to Sections 11.8 or 11.9.

11.8 INVOLUNTARY TERMINATION

Unless the "lead Employer" provides otherwise in an addendum hereto, the "lead Employer" shall have the power to terminate the participation of any Participating Employer (hereafter "Terminated Employer") in this Plan. If and when the "lead Employer" wishes to exercise this power, the following shall occur:

(a) **Notice.** The "lead Employer" shall give the "Terminated Employer" a notice of the "lead Employer's" intent to terminate the "Terminated Employer's" status as a Participating Employer of the Plan. The "lead Employer" will provide such notice not less than thirty (30) days prior to the date of termination unless the "lead Employer" determines that the interest of Plan Participants requires earlier termination.

(b) **Spin-off.** The "lead Employer" shall establish a new defined contribution plan, using the provisions of this Plan with any modifications contained in the "Terminated Employer's" participation agreement, as a guide to establish a new defined contribution plan (the "spin-off plan"). The "lead Employer" will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to the "spin-off plan." The "Terminated

Employer" shall be the Employer, Administrator, and sponsor of the "spin-off plan." The Trustee of the "spin-off plan" shall be the person or entity designated by the "Terminated Employer." However, the "lead Employer" shall have the option to designate an appropriate financial institution as Trustee instead if necessary to protect the interest of the Participants. The "lead Employer" shall have the authority to charge the "Terminated Employer" or the Accounts of the Employees of the "Terminated Employer" a reasonable fee to pay the expenses of establishing the "spin-off plan."

(c) **Alternatives.** The "Terminated Employer," in lieu of creation of the "spin-off plan" under (b) above, has the option to elect a transfer alternative in accordance with this Subsection (c).

(1) **Election.** To exercise the option described in this Subsection, the "Terminated Employer" must inform the "lead Employer" of its choice and must supply any reasonably required documentation as soon as practical. If the "lead Employer" has not received notice of a "Terminated Employer's" exercise of this option within ten (10) days prior to the stated date of termination, the "lead Employer" can choose to disregard the exercise and proceed with the Spin-off.

(2) **Transfer.** If the "Terminated Employer" selects this option, the Administrator shall transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to a qualified plan the "Terminated Employer" maintains. To exercise this option, the "Terminated Employer" must deliver to the "lead Employer" or Administrator in writing the name and other relevant information of the transferee plan and must provide such assurances that the Administrator shall reasonably require to demonstrate that the transferee plan is a qualified plan.

(d) **Participants.** The Employees of the "Terminated Employer" shall cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the "Terminated Employer," effective as of the date of termination. To the extent that these Employees have accrued but unpaid contributions as of the date of termination, the "Terminated Employer" shall pay such amounts to the Plan or the "spin-off plan" no later than thirty (30) days after the date of termination, unless the "Terminated Employer" effectively selects the Transfer option under Subsection (c)(2) above.

(e) **Consent.** By its signature on the participation agreement, the "Terminated Employer" specifically consents to the provisions of this Article and agrees to perform its responsibilities with regard to the "spin-off plan," if necessary.

11.9 VOLUNTARY TERMINATION

A Participating Employer (hereafter "withdrawing employer") may voluntarily withdraw from participation in this Plan at any time. If and when a "withdrawing employer" wishes to withdraw, the following shall occur:

(a) **Notice.** The "withdrawing employer" shall inform the "lead Employer" and the Administrator of its intention to withdraw from the Plan. The "withdrawing employer" must give the notice not less than thirty (30) days prior to the effective date of its withdrawal.

(b) **Procedure.** The "withdrawing employer" and the "lead Employer" shall agree upon procedures for the orderly withdrawal of the "withdrawing employer" from the plan. Such procedures may include any of the optional spin-off or transfer options described in Section 11.8.

(c) **Costs.** The "withdrawing employer" shall bear all reasonable costs associated with withdrawal and transfer under this Section.

(d) **Participants.** The Employees of the "withdrawing employer" shall cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the "withdrawing employer," effective as of the effective date of withdrawal. To the extent that such Employees have accrued but unpaid contributions as of the effective date of withdrawal, the "withdrawing employer" shall contribute such amounts to the Plan or the "spin-off plan" promptly after the effective date of withdrawal, unless the accounts are transferred to a qualified plan the "withdrawing employer" maintains.

11.10 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Plan Description: Non-Standardized Pre-Approved Money Purchase/Profit Sharing
FFN: 31799070703-001 Case: 201900539 EIN: 23-2139612
Letter Serial No: Q702626a
Date of Submission: 12/31/2018

FIS BUSINESS SYSTEMS LLC
701 SAN MARCO BLVD.
JACKSONVILLE, FL 32207

Contact Person:
Janell Hayes
Telephone Number:
513-975-6319
In Reference To: TEGE:EP:7521
Date: 06/30/2020

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable for use by employers for the benefit of their employees under Internal Revenue Code (IRC) Section 401.

We considered the changes in qualification requirements in the 2017 Cumulative List of Notice 2017-37, 2017-29 Internal Revenue Bulletin (IRB) 89. Our opinion relates only to the acceptability of the form of the plan under the IRC. We did not consider the effect of other federal or local statutes.

You must provide the following to each employer who adopts this plan:
. A copy of this letter
. A copy of the approved plan
. Copies of any subsequent amendments including their dates of adoption
. Direct contact information including address and telephone number of the plan provider

Our opinion on the acceptability of the plan's form is a determination as to the qualification of the plan as adopted by a particular employer only under the circumstances, and to the extent, described in Revenue Procedure (Rev. Proc.) 2017-41, 2017-29 I.R.B. 92. The employer who adopts this plan can generally rely on this letter to the extent described in Rev. Proc. 2017-41. Thus, Employee Plans Determinations, except as provided in Section 12 of Rev. Proc. 2020-4, 2020-01 I.RB. 148 (as updated annually), will not issue a determination letter to an employer who adopts this plan. Review Rev. Proc. 2020-4 to determine the eligibility of an adopting employer, and the items needed, to submit a determination letter application. The employer must also follow the terms of the plan in operation.

Except as provided below, our opinion doesn't apply to the requirements of IRC Sections 401(a)(4), 401(I), 410(b), and 414(s). Our opinion doesn't apply to IRC Sections 415 and 416 if an employer maintains or ever maintained another qualified plan for one or more employees covered by this plan. For this purpose, we will not consider the employer to have maintained another defined contribution plan provided both of the following are true:
. The employer terminated the other plan before the effective date of this plan
. No annual additions have been credited to any participant's account under the other plan as of any date within the limitation year of this plan

Also, for this purpose, we'll consider an employer as maintaining another defined contribution plan, if the employer maintains any of the following:
. A welfare benefit fund defined in IRC Section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees as defined in IRC Section 419A(d)

. An individual medical account as defined in IRC Section 415(1)(2), which is part of a pension or annuity plan maintained by the employer
. A simplified employee pension plan

Our opinion doesn't apply to Treasury Regulations Section 1.401(a)-1(b)(2) requirements for a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

Our opinion doesn't constitute a determination that the plan is an IRC Section 414(d) governmental plan. This letter is not a ruling with respect to the tax treatment to be given contributions which are picked up by the governmental employing unit within the meaning of IRC Section 414(h)(2).

Our opinion doesn't constitute a determination that the plan is an IRC Section 414(e) church plan.

Our opinion may not be relied on by a non-electing church plan for rules governing pre-ERISA participation and coverage.

Our opinion applies to the requirements of IRC Section 410(b) if 100 percent of all non-excludable employees benefit under the plan.

Employers who choose a safe harbor allocation formula and a safe harbor compensation definition may also rely on this opinion letter for the non-discriminatory amounts requirement under IRC Section 401(a)(4).

If this plan includes a cash or deferred arrangement (CODA) or otherwise provides for contributions subject to IRC Sections 401(k) and/or 401(m), the employer may rely on the opinion letter regarding the form of the non-discrimination tests of IRC Sections 401(k)(3) and 401(m)(2), if the employer uses a safe harbor compensation definition. For plans described in IRC Sections 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may rely on the opinion letter regarding whether the plan's form satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan. For SIMPLE plans described in IRC Sections 401(k)(11) and 401(m)(10), employers may also rely on the opinion letter regarding whether the plan's form satisfies the requirements of those sections.

The provisions of this plan override any conflicting provision contained in the trust or custodial account documents used with the plan, and an adopting employer may not rely on this letter to the extent that provisions of a trust or custodial account that are a separate portion of the plan override or conflict with the provisions of the plan document. This opinion letter does not cover any provisions in trust or custodial account documents.

An employer who adopts this plan may not rely on this letter when:
. the plan is being used to amend or restate a plan of the employer which was not previously qualified
. the employer's adoption of the plan precedes the issuance of the letter
. the employer doesn't correctly complete the adoption agreement or other elective provisions in the plan
. the plan is not identical to the pre-approved plan (that is, the employer has made amendments that cause the plan not to be considered identical to the pre-approved plan, as described in Section 8.03 of Rev. Proc. 2017-41)

Our opinion doesn't apply to what is contained in any documents referenced outside the plan or adoption agreement, if applicable, such as a collective bargaining agreement.

Our opinion doesn't consider issues under Title I of the Employee Retirement Income Security Act (ERISA) which are administered by the Department of Labor.

If you, the pre-approved plan provider, have questions about the status of this case, you can call the telephone number at the top of the first page of this letter. This number is only for the provider's use.

Individual participants or adopting eligible employers with questions about the plan should contact you.

You must include your address and telephone number on the pre-approved plan or the plan's adoption agreement, if applicable, so that adopting employers can contact you directly.

If you write to us about this plan, provide your telephone number and the best time to call if we need more information. Whether you call or write, refer to the letter serial number and file folder number at the top of the first page of this letter.

Let us know if you change or discontinue sponsorship of this plan.

Keep this letter for your records.

Sincerely Yours,

Khin M. Chow

Khin M. Chow
Director, EP Rulings and Agreements

Letter 6186 (June-2020)
Catalog Number 72434C

LYNX Defined Contribution Plan for BU Employees

ALLOCATION AND DELEGATION OF RESPONSIBILITIES

(Cycle 3 Restatement)

Capitalized terms not defined in this document have the meanings ascribed to them in the Voya Retirement Insurance and Annuity Company Non-Standardized Governmental 401(a) Pre-Approved Plan (Basic Plan Document #01 and the Adoption Agreement) adopted by the Central Florida Regional Transportation Authority d/b/a LYNX for the LYNX Defined Contribution Plan for BU Employees ("Plan document").

Adoption Agreement section 9.c. of the Plan document states that the Administrator of the Plan is the "Board of Trustees (named fiduciary) appointed by the Employer and Union, and Administrative Committee (functional fiduciary) appointed by the Employer."

Basic Plan Document section 2.3 of the Plan document states, in pertinent part, "If more than one person is appointed as Administrator, then the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator."

As provided in prior versions of the Plan, the allocation of Administrator responsibilities is as follows:

1. Authority of the Board of Trustees and Employer

The Board of Trustees, as the Administrator that is the named fiduciary, shall be the plan administrator for purposes of the Code; shall generally be responsible for the administration of the Plan; and, in addition to the powers and authorities expressly conferred upon it in the Plan, shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the power and authority to interpret and construe the provisions of the Plan within the Board of Trustees' sphere of authority, to make benefit determinations, and to resolve any disputes (including disputes raised by Participants or their Beneficiaries) which arise under the Plan within the Board of Trustees' sphere of authority. The Board of Trustees may designate any person to carry out any of its powers, authority, or responsibilities for the operation and administration of the Plan except that no allocation by the Board of Trustees of, or designation by the Board of Trustees with respect to, any of such powers, authority, or responsibilities to another person shall become effective unless such allocation or designation shall first be accepted by such person in a writing signed by it and delivered to the Board of Trustees.

Notwithstanding the foregoing, the Employer, as the Plan sponsor, has reserved for itself the obligation and authority to carry out such ministerial Plan administration tasks as are specified in this Plan and the obligation and authority to communicate with Eligible Employees, Participants (or their Beneficiaries), the Custodian, the Board of Trustees, and any applicable service provider to the Plan, it being the intention that the Employer shall carry out the routine ministerial actions of the Plan and communications concerning the Plan whereas the Board of Trustees shall carry out the more complex administrative tasks under the Plan, such as resolving any Participant and Beneficiary disputes which may arise under the Plan. The Employer shall have the power and authority to interpret and construe the provisions of the Plan within the Employer's sphere of authority.

The Employer may employ such attorneys, agents, accountants, and other service providers to the Plan as it may deem necessary or advisable to assist the Employer or the Administrator in carrying out its or their duties hereunder.

2. Discretionary Authority

The Board of Trustees (or any individual to whom authority has been delegated in accordance with Section 1 above), in carrying out its duties under the Plan, including making benefit determinations, interpreting or construing the provisions of the Plan within its sphere of authority, and resolving disputes, shall have absolute discretionary authority. The Board of Trustees shall promptly communicate to the Employer any and all information that the Employer, the Board of Trustees, the Custodian, and/or any applicable service provider to the Plan may reasonably require.

The Employer (or any committee to whom authority has been delegated in accordance with Section 3 below), in carrying out its duties under the Plan, including carrying out ministerial Plan administration tasks, interpreting or construing the provisions of the Plan within its sphere of authority, and communicating with Eligible Employees, Participants (or their Beneficiaries), the Custodian, the Board of Trustees, and any applicable service provider to the Plan, shall have absolute discretionary authority.

3. Action of the Employer through the Administrative Committee

Any ministerial administrative act authorized, permitted, or required to be taken under the Plan by the Employer may be taken by a majority of the members of the Plan Administrative Committee appointed to act on behalf of the Employer, either by vote at a meeting, or in writing without a meeting, or by the employee or employees of the Employer designated by such committee to carry out such acts on behalf of the Employer. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Employer as under the Plan shall be in writing and signed by either (i) a majority of the members of such committee or by such member or members as may be designated by an instrument in writing, signed by all the members thereof, as having authority to execute such documents on its behalf, or (ii) the employee or employees authorized to act for the Employer in accordance with the provisions of this Section.

This document is incorporated in, and has the same force and effect as, the Plan document. Accordingly, as is the case with the Plan document, while the Employer shall have the sole authority to amend this document, any amendment that is specifically governed by the terms of the collective bargaining agreement with the Union must be in compliance therewith.

Adopted this ___ day of _________, 2022.

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX

____
By: ________________________________
Its: ________________________________

Accepted by:

BOARD OF TRUSTEES (named fiduciary):	**ADMINISTRATIVE COMMITTEE** (functional fiduciary):
________________________________ Brian Anderson, Trustee	________________________________ Brian Anderson, Committee Member
________________________________ Michelle Daley, Trustee	________________________________ Michelle Daley, Committee Member
________________________________ Albert J. Francis II, Trustee	________________________________ Albert J. Francis II, Committee Member
________________________________ Dennis Hines, Trustee	
________________________________ Grady Miller, Trustee	
________________________________ Erawarth Sooknanan, Trustee	

Exhibit "B"

LYNX DEFINED CONTRIBUTION TRUST FOR BU EMPLOYEES

AGREEMENT AND DECLARATION OF TRUST

January 1, 2022

TABLE OF CONTENTS

BACKGROUND

This Trust was originally established in connection with the creation of a new defined contribution plan for all bargaining unit employees hired on or after March 1, 2014, pursuant to the collective bargaining agreement dated October 1, 2012 between the AMALGAMATED TRANSIT UNION LOCAL 1596, AFL-CIO, CLC and CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY.

This Trust is being restated effective retroactive to January 1, 2022 in connection with the restatement of the Plan (hereinafter defined) and the transition of the Plan's recordkeeping and third party administration services to a new provider (from MassMutual to Voya).

PREAMBLE

This restated AGREEMENT AND DECLARATION OF TRUST ("Trust Agreement") is entered into by and among CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY ("Plan Sponsor") and the persons named as Trustees at the end of this Trust Agreement.

WHEREAS, the LYNX DEFINED CONTRIBUTION TRUST FOR BU EMPLOYEES ("Trust") is hereby restated and continued and shall be maintained for the purpose of providing benefits under the LYNX DEFINED CONTRIBUTION PLAN FOR BU EMPLOYEES ("Plan"); and

Whereas, the Plan Sponsor desires that the Trustees act as trustees of the Trust; and

Whereas, the Trustees desire to act as trustees of the Trust.

NOW, THEREFORE, the parties agree that effective January 1, 2022, the Trustees shall hold all funds and other property from time to time contributed or transferred to the Trust pursuant to the provisions of the Plan, together with all increments, proceeds, investments, and reinvestments thereof, in trust, for the uses and purposes and upon the terms and conditions hereinafter set forth and in compliance with Chapter 112, Florida Statutes.

ARTICLE I
DEFINITIONS

1.01 Definitions

When used herein, the following words and phrases shall have the following meanings:

Agreement and Declaration of Trust (also Trust Agreement) means this Agreement and Declaration of Trust for the Lynx Defined Contribution Trust for BU Employees, as amended from time to time.

Collective Bargaining Agreement means a collective bargaining agreement between the Union and the Employer, the terms of which are approved by and binding upon the Employer and the Union, and their respective agents, including any officers and employees thereof.

Contributions means the contributions that are required to be made to the Plan and are transferred to this Trust.

Employer (also Plan Sponsor) means Central Florida Regional Transportation Authority and any agent, subsidiary, affiliate or successor thereof.

Fund or Trust Fund means any and all assets held under this Trust.

Funding Agent means the entity designated by the Employer, which at the time shall be designated, qualified, and acting under the Funding Agreement and shall include any insurance company that issues an annuity or insurance contract pursuant to the Funding Agreement or any person holding assets in a custodial account pursuant to the Funding Agreement. The term Funding Agent shall include any delegate of the Funding Agent as may be provided in the Funding Agreement.

Funding Agreement means any agreement or agreements entered into between the Employer and the Funding Agent relating to the holding, investment, and reinvestment of the assets of the Plan, together with all amendments thereto and shall include any agreement establishing a custodial account, an annuity contract, or an insurance contract (other than a life, health or accident, property, casualty, or liability insurance contract) for the investment of assets if the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under Code section 401.

Funding Arrangement means the custodial accounts, annuity contracts, or insurance contracts maintained by the Funding Agent under the Funding Agreement.

Investment Fund means any separate investment vehicle maintained as may be provided in the Plan or the Funding Agreement or any separate investment fund maintained by the Funding Agent, to the extent that there are Participant Accounts or sub-Accounts under such funds, to which assets of the Plan may be allocated and separately invested.

Plan means the Lynx Defined Contribution Plan for BU Employees.

Trust means the Lynx Defined Contribution Trust for BU Employees maintained by this Trust Agreement. The Trust is intended to be a qualified trust described in Code section 401(a) which is exempt from tax under Code section 501(a).

Trustees, Board of Trustees, or Board shall mean the Board of Trustees acting collectively in accordance with this Trust Agreement to carry out duties under this Trust and under the Plan. The term "Employer Trustees" means the Trustees selected by the Employer as provided in Article III and the term "Union Trustees" means the Trustees selected by the Union as provided in Article III.

Union means the Amalgamated Transit Union Local 1596, AFL-CIO, CLC or any successor thereto.

All other capitalized terms which are not defined herein shall have the meaning ascribed to them in the Plan.

1.02 Interpretation

Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Wherever used herein, the masculine pronoun shall include the feminine or other-gendered pronoun, the singular shall include the plural, and the plural shall include the singular.

ARTICLE II
PURPOSE AND RIGHTS

2.01 Purpose

This Trust has been established and is maintained to provide retirement and other benefits for Eligible Employees and their Beneficiaries. Except as provided in Section 5.03, prior to the satisfaction of all liabilities under the Plan, no part of the Trust assets may be applied to any purpose other than providing benefits under the Plan and for defraying expenses of administering the Plan and the Trust.

2.02 Rights of Participants, Eligible Employees, and Beneficiaries

The rights of Participants, Eligible Employees, and their Beneficiaries shall be determined solely under the Plan.

ARTICLE III
BOARD OF TRUSTEES

3.01 Number

The Board of Trustees shall consist of six (6) Trustees. Three (3) shall be Employer Trustees and three (3) shall be Union Trustees.

3.02 Appointment

The Union Trustees shall be persons appointed by the Union, and the Employer Trustees shall be persons appointed by the Employer. The Employer and Union shall each establish a method for selection, removal, and replacement of its own appointed Trustees.

3.03 Named Fiduciaries

The appointed Trustees shall constitute the named fiduciaries of the Trust within the meaning of Chapter 112, Florida Statutes.

Notwithstanding any other provision of this Trust Agreement to the contrary, the Trustees shall discharge their duties solely in the best interest of the Participants and Beneficiaries for the exclusive purpose of providing benefits to the Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan. Each Trustee shall exercise his or her duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims.

The initial Trustees signified their acceptance of their duties and responsibilities as Trustees and as named fiduciaries by executing the original Trust Agreement. Successor Trustees thereafter signified their acceptance of their duties and responsibilities as Trustees and as named fiduciaries by consent to their appointment in writing. The current Trustees signify their continued acceptance of their duties and responsibilities as Trustees and as named fiduciaries by executing this restated Trust Agreement. Future Trustees shall signify their acceptance of their duties and responsibilities as Trustees and as named fiduciaries by consent to their appointment in writing.

3.04 Tenure

Each Trustee shall continue to serve during the existence of the Trust until his or her death, incapacity, resignation, or removal by the appointing entity.

3.05 Resignation or Removal

At any time and for any reason, each appointing entity shall have the right to remove its appointed Trustee(s).

A Trustee may resign at any time by giving thirty (30) calendar days' written notice to the entity (Employer or Union) that appointed the Trustee. The resignation shall be effective upon the date specified in the notice, unless the resigning Trustee and the appointing entity shall mutually agree upon a different effective date.

Upon the removal or resignation of a Trustee, the Employer or the Union, as the case may be, shall notify the Board of Trustees of such removal or resignation within ten (10) calendar days thereof.

3.06 Appointment of Trustees to Fill Vacancies

In the event of a vacant Trustee position, whether upon initial creation of this Trust or due to removal, resignation, or otherwise, the entity (Employer or Union) with the right to fill the vacant Trustee position shall appoint a Trustee to fill the vacancy within fifteen (15) calendar days or as soon as reasonably possible following the date of the vacancy. Such appointment shall be delivered in writing to the Board of Trustees, along with the consent to appointment signed by the Trustee filling the vacancy.

A successor Trustee duly appointed to replace a predecessor Trustee shall succeed to all of the powers, duties, and immunities of the predecessor Trustee. Each predecessor Trustee shall execute all such instruments and perform all such other acts as the Board of Trustees shall reasonably request to effect the provisions hereof. A successor Trustee shall have no duty to inquire into the administration of the Trust for any period prior to the succession.

3.07 Officers of the Board

The officers of the Board shall consist of a Chairperson and a Secretary.

Each officer's term of office shall be one Plan Year (or the remainder of the Plan Year, if the officer takes office after the first day of the Plan Year). There is no limit on the number of terms a person may serve as an officer.

In even-numbered Plan Years, the Chairperson shall be an Employer Trustee and the Secretary shall be a Union Trustee. In odd-numbered Plan Years, the Chairperson shall be a Union Trustee and the Secretary shall be an Employer Trustee.

Following creation of the Trust, the Employer Trustees selected one among them to fill the officer position to be held by an Employer Trustee for the initial Plan Year of their appointment, and the Union Trustees selected one among them to fill the officer position to be held by the Union Trustee for the initial Plan Year of their appointment, with such appointments made and announced at the first meeting of the Board, as the first order of business.

Thereafter, at the last regularly-scheduled Board meeting of each Plan Year, the Employer Trustees have selected, and shall continue to select, one among them to fill the officer position to be held by an Employer Trustee in the next succeeding Plan Year, and the Union Trustees have selected, and shall continue to select, one among them to fill the officer position to be held by a Union Trustee in the next succeeding Plan Year, with each such officer assuming office on the first day of the next succeeding Plan Year.

At any time and for any reason, each appointing group of Trustees (either the Employer Trustees or the Union Trustees), by a majority vote, shall have the right to remove its appointed Trustee from its officer position.

A Trustee may resign from an officer position at any time by giving thirty (30) calendar days' written notice to the appointing group of Trustees (either the Employer Trustees or the Union Trustees) that appointed him or her to the officer position. The resignation shall be effective upon the date specified in the notice, unless the resigning officer and the appointing group of Trustees shall mutually agree upon a different effective date.

Upon the removal or resignation of an officer, the Employer Trustees or the Union Trustees, as the case may be, shall notify the Board of Trustees of such removal or resignation within ten (10) calendar days thereof.

In the event of a vacant officer position, whether due to removal, resignation, or otherwise, the appointing group of Trustees (either the Employer Trustees or the Union Trustees) with the authority to appoint that officer position for the then-current Plan Year shall select one among them to fill the vacant officer position, and shall make such selection at the next Board meeting that occurs following the date of the vacancy.

3.08 Authority and Duties of the Officers

The Chairperson shall preside at all meetings of the Board in accordance with reasonable rules, and shall serve as the Trust's agent for service of process (unless the Board expressly designates another agent). If the Secretary is absent or unable to perform his or her duties, or if the Secretary position is vacant, the Chairperson shall also perform the duties of the Secretary until the Secretary resumes performance of duties or until a Secretary is appointed, as the case may be.

The Secretary shall keep a record of all meetings, reports to and actions of the Trustees and shall be responsible for the records of the Plan. If the Chairperson is absent or unable to perform his or her duties, or if the Chairperson position is vacant, the Secretary shall also perform the duties of the Chairperson until the Chairperson resumes performance of duties, or until a Chairperson is appointed, as the case may be.

3.09 Effect of Termination of Employment or Termination of Union Membership

If an Employer Trustee was an employee of the Employer at the time of appointment to his Trustee position, and his employment thereafter terminates for any reason, he shall also be deemed to have simultaneously resigned from his position as a Trustee, and if applicable, from his position as an officer of the Trust, effective as of the date of termination of employment. If a Union Trustee was a member of the Union at the time of appointment to his Trustee position, and his Union membership thereafter terminates for any reason, he shall be deemed to have simultaneously resigned from his position as a Trustee, and if applicable, from his position as an officer of the Trust, effective as of the date of termination of Union membership. For purposes of this section 3.09, "member of the Union" or "Union membership" means status as a member of the collective bargaining unit represented by the Union.

3.10 Operation

It is the intention hereof that this Trust shall at all times be administered by an equal number of Employer and Union Trustees. However, notwithstanding anything herein to the contrary (including the provisions of Sections 3.12, 3.13, and 4.08), in no event shall this Trust or the operation of the Board of Trustees be impaired by the death, incapacity, resignation, or removal of, or failure to appoint, a Trustee or an officer, so long as there is at least one Trustee then serving. In the event of one or more vacancies on the Board, the other Trustee(s) shall have full power to act until a Trustee(s) has been appointed to fill the vacancy(ies).

3.11 Meetings of Trustees

The Board shall hold regular meetings on the second Tuesday of February, May, August, and November, or on such different dates, and at such time and place, as are mutually agreed upon by the Chairperson and the Secretary. The Chairperson shall provide all Trustees with advance written notice of the date, time, and place of each meeting at least seven (7) calendar days in advance of the meeting, along with a notice of the matters to be considered at the meeting.

Special meetings of the Board may be called, as necessary to conduct the business of the Trust, by the Chairperson, the Secretary, or any two (2) Trustees by providing all Trustees with advance written notice of the date, time, and place of each meeting at least three (3) calendar days in advance of the meeting, along with a notice of the matters to be considered at the meeting.

3.12 Quorum

Except as specifically provided herein, one (1) Union Trustee and one (1) Employer Trustee shall be required for a quorum of the Board of Trustees. If the Employer has failed to fill vacant Employer Trustee positions in the manner provided herein such that all Employer Trustee positions are simultaneously vacant, two (2) Union Trustees shall constitute a quorum. If the Union has failed to fill vacant Union Trustee positions in the manner provided herein such that all Union Trustee positions are simultaneously vacant, two (2) Employer Trustees shall constitute a quorum.

3.13 Voting

Voting shall be required for any action taken at a Board meeting. Except as specifically provided herein, action by the Board shall require a majority vote of those present at a Board meeting. Each Trustee shall have only one vote. However, when the number of Trustees present is not equal as between Employer and Union Trustees, the value of the vote of each Trustee of the Employer or of the Union (whichever is represented by a lesser number of Trustees) shall be equal to 1.0 multiplied by a ratio of which the numerator is the number of Trustees present and voting on behalf of the overrepresented entity, and the denominator is the number of Trustees present on behalf of the underrepresented entity, such that the combined value of votes of the Trustee(s) of each appointing entity shall be equal. Notwithstanding the foregoing, if at any time there is only one (1) Trustee then serving, an affirmative vote by that one (1) Trustee shall constitute an action of the Board of Trustees.

3.14 Disqualification for Interest

A Trustee shall be disqualified from voting upon any matter in which he or she is personally interested.

3.15 Authorization to Act for Trustees

The Chairperson and Secretary together are authorized to carry out the decisions of the Trustees between meetings of the Board. The Chairperson and the Secretary may delegate these ministerial duties.

Notwithstanding the foregoing, the Board may instead authorize any person (including a Trustee) to take any action on behalf of the Board, and such authorized person and others dealing with the Board may accept and rely upon such Board authorization unless notified in writing that authorization has been revoked by the Board.

3.16 Disputes of Trustees

In the event of a deadlock of the Trustees, including the failure to obtain a quorum at two (2) successive meetings of the Trustees for which proper advance written notice was given, any Trustee may invoke non-binding mediation by providing a written notice of same to all other Trustees and to the Chief Executive Officer of the Employer ("LYNX CEO"). Except as agreed-upon by the Trustees:

The mediator shall be selected by the Trustees within five (5) business days of receipt of the notice invoking mediation, or if the Trustees cannot agree on selection of the mediator within such time frame, the mediator shall be selected by the LYNX CEO. In all events, the mediator must be neutral and have no established connections to the Employer or to any Trustee. The mediation shall be held in Orlando, Florida on the date and time specified by the mediator; provided, however, that the mediator shall endeavor to hold the mediation within fifteen (15) business days of his or her appointment. Any Trustee may submit a written mediation statement to the mediator that shall not exceed ten (10) pages in length prior to the mediation. Any documents provided to the mediator or statements made during or in the context of the mediation shall not be admissible as evidence in any subsequent court proceedings. The mediator shall establish all other rules governing the mediation proceedings.

If the Trustees are unable to resolve the deadlock through non-binding mediation, any Trustee may submit the dispute to the Chair of the governing board of the Employer ("LYNX Chair"). The LYNX Chair, or a designee selected by the LYNX Chair, shall resolve the dispute in such manner as the LYNX Chair or his designee determines reasonable and appropriate under the circumstances. The decision of the LYNX Chair or his designee shall be final and binding. If the LYNX Chair (or his designee), in carrying out his dispute-resolution duties, determines that a Board of Trustees meeting should be held, the LYNX Chair (or his designee) shall provide all Trustees with advance written notice of the date, time, and place of such meeting at least ten (10) calendar days in advance of the meeting, along with a notice of the matters to be considered at the meeting, and shall preside at the meeting. The presence of the LYNX Chair (or his designee) at such meeting shall be deemed to establish a quorum, and if one or more voting deadlocks occur at such meeting, the LYNX Chair (or his designee) shall cast the tie-breaking vote(s).

In carrying out the dispute-resolution duties hereunder, the mediator and/or the LYNX Chair (or his designee), as the case may be, shall not have the authority to alter or amend the terms of the Collective Bargaining Agreement, but shall have the authority to interpret the Plan, this Trust Agreement, and the obligations set forth herein in such a manner as to carry out the intent of the Plan and this Trust to benefit Participants and their Beneficiaries.

3.17 Coordination with Plan Document and Collective Bargaining Agreement

The Employer shall not exercise its powers to appoint or remove Trustees or Administrators as described in the first sentence of section 2.1(a) of the Plan in a manner that is inconsistent with the terms of this Trust Agreement or the Collective Bargaining Agreement.

3.18 Type of Trustee

A "Directed Trustee" is a trustee who, with respect to the investment of Plan assets, is subject to the direction of the Administrator, the Employer, a properly appointed investment manager, or Plan participant. A "Discretionary Trustee" is a trustee who has the authority and discretion to invest, manage or control any portion of the Plan assets. Notwithstanding a designation as a "Discretionary Trustee," a trustee’s discretion is limited, and the trustee shall be considered a "Directed Trustee", to the extent the trustee is subject to the direction of the Administrator, the Employer, or a properly appointed investment manager, under an agreement between the trustee and the Employer or Administrator. A trustee also is considered a "Directed Trustee" to the extent the trustee is subject to investment direction of Plan participants.

The Board shall act as a Discretionary Trustee; provided, however, that the Trustee shall comply with the Plan and Trust provisions specifying the Trustee’s responsibilities with regard to Participant-directed investments. The Trustee shall serve as the "Special Trustee," as referenced in the Plan and Section 4.18 herein, with the responsibility to collect delinquent Plan contributions, to the extent applicable.

ARTICLE IV
POWERS AND DUTIES OF THE TRUSTEES

4.01 Trust Administrative Powers and Duties

In the administration of the Trust, the Board of Trustees shall have the powers and duties set forth in this Article, in addition to all powers and duties otherwise expressly set forth in this Trust Agreement or the Plan.

4.02 Trust Fund and Investments

The Board of Trustees shall establish and/or maintain the Trust Fund in which all of the Contributions shall be held. Subject to any limitations provided in the Plan, and with respect to such Trust Fund, the Board is empowered:

(a) as provided under the Plan, to establish such separate Investment Funds as the Board shall determine. Each Participant shall make investment elections with respect to the investment of his Account among the Investment Funds, as provided in the Plan. The Board of Trustees shall have no responsibility for the Participants' election of investments among the Investment Funds and shall not render investment advice to any person in connection thereto. The Board of Trustees shall be required to follow the directions so given to it by the Administrator with respect to such elections, except that the Board of Trustees shall not be required to follow any directions that would result in a breach of the Trustees' fiduciary duties and provided, further, that the Board of Trustees shall not invest any portion of a Participant-directed Account in "collectibles" within the meaning of Code section 408(m);

(b) to appoint an investment manager to manage the investment of the assets of all or any portion of the Trust Fund. The investment manager shall be any firm or individual registered as an investment advisor under the Investment Advisors Act of 1940, a bank as defined in such Act, or an insurance company qualified under the laws of more than one state to perform services consisting of the management, acquisition, or disposition of any assets of the Plan. Upon appointment of the investment manager in writing and the written acknowledgment by the investment manager of its status with respect to the Plan, the investment manager shall have such authority as is delegated to it by the Board, together with such authority as may thereafter from time to time be delegated to it by the Board;

(c) to invest and reinvest all or any part of the Trust Fund, including both principal and income, in such securities, real estate, and other property as may be selected by the Board;

(d) to purchase annuities or otherwise invest assets of the Trust Fund under a contract or contracts with an insurance company or companies, and hold and retain such contract or contracts as part of the Trust Fund;

(e) to invest and reinvest all or any part of the Trust Fund under an insurance contract or contracts that contain provisions relating to a guaranteed rate of return on such investment;

(f) to sell, lease, exchange, or otherwise dispose of all or any part of the Trust Fund at such prices, upon such terms and conditions, and in such manner as it shall determine, including the right to lease, with or without option to purchase, for any term, and also including the right to surrender or cancel any insurance or annuity contract or contracts at any time held in the Trust Fund;

(g) to exercise, buy, or sell rights of conversion or subscription; provided, however, that any conversion of employer securities shall be on the same terms as are applicable to all holders of the convertible securities and in exchange for at least the fair market value of the securities converted;

(h) to enter into or oppose any plan of consolidation, merger, reorganization, capital readjustment, or liquidation of any corporation or other issuer of securities held hereunder (including any plan for the sale, lease, or mortgage of any of its property or the adjustment or liquidation of any of its indebtedness) and, in connection with any such plan, to enter into any security holders' trust agreement, to deposit securities under such agreement, and to pay assessments or subscriptions from the other assets held hereunder;

(i) to retain in cash or in forms of investment otherwise unproductive of income such portion of the Trust Fund as it shall determine is necessitated by the cash requirements of the Trust, provided however, that to the maximum extent feasible, such amounts shall be held in forms of investment which are productive of income but are sufficiently liquid to meet such cash requirements;

(j) to deposit securities held hereunder in any depository;

(k) to transfer to and invest all or any part of the Trust Fund in any pooled, common, collective, or commingled trust fund (including any collective investment trust for qualified employee benefit plans) which is then maintained by a bank or trust company, or any of its affiliates, when such bank or trust company is acting as trustee, co-trustee, agent for the Trustees, or as an investment manager; provided that the instrument establishing such trust, as amended from time to time, shall govern any investment therein, and is hereby made a part of this Trust Agreement as if fully set forth herein;

(l) pursuant to the direction of the Administrator, to purchase and sell interests in a registered investment company registered under the Investment Company Act of 1940 (whether or not the Trustee or an affiliate of the Trustee serves as investment advisor or sub-advisor and receives compensation from the registered investment company for its services as investment advisor or sub-advisor); and

(m) to engage in any transaction with respect to all or any part of the Trust Fund with a pooled investment fund of any insurance company qualified to do business in any state which transaction is a sale or purchase of an interest in such fund.

The term "securities", wherever used in this Trust Agreement, shall include common and preferred stocks, contractual obligations of every kind, whether secured or unsecured, equitable interests in real or personal property, and intangible property of every description and howsoever evidenced.

4.03 Adjustment of Claims

The Board of Trustees is empowered to compromise and adjust any and all claims, debts, or obligations in favor of or against the Trust, whether such claims be in litigation or not, upon such terms and conditions as it shall determine, and to reduce the rate of interest on, to extend or otherwise modify, to foreclose upon default, or otherwise to enforce any such claim, debt, or obligation; provided however, that any such action taken under this Section 4.03 which may affect a claim, debt, or obligation in favor of or against the Plan, shall be subordinate to, and consistent with, such directions as the Administrator may provide. The Board of Trustees shall be required to follow the directions so given to it by the Administrator, except that the Board of Trustees shall not be required to follow any directions that would result in a breach of the Trustees' fiduciary duties.

4.04 Borrowing

The Board of Trustees, by unanimous vote of all Trustees then serving, and subject to all applicable laws (including, but not limited to, any restraints on borrowing), is empowered to borrow money, upon such terms and conditions as it deems desirable or proper for the improvement, protection, preservation, or other best interest of the Trust. For any sum so borrowed, the Board may issue its promissory note as the Trustees and secure the repayment thereof by mortgaging or pledging any part or all of the Trust.

4.05 Voting Rights

The Trustee is empowered to exercise the voting rights appurtenant to any securities held hereunder, either in person or by proxy, and to execute proxies or powers of attorney to any one or more persons.

4.06 Registration of Securities; Nominees

The Board of Trustees is empowered to register securities in its own name, or in the name of its nominee, without disclosing the Trust, or to hold the same in bearer form, and to take title to other property in its own name or in the name of its nominee without disclosing the Trust; provided however, that the Board shall be responsible for the acts of its nominees.

4.07 Agents, Attorneys, Actuaries, and Accountants

The Board of Trustees is empowered to employ such agents, attorneys (including attorneys who may be of counsel for the Plan Sponsor), actuaries, and accountants as it may deem necessary or proper in connection with the Board's duties under this Trust, and to determine and pay the reasonable compensation and expenses of such agents, attorneys, actuaries, and accountants.

4.08 Deposit of Funds

The Board of Trustees is empowered to deposit funds, pending investment or distribution thereof, in the commercial or savings department of any bank, savings and loan association or trust company supervised by the United States or a state or agency thereof; and it is authorized to accept such regulations covering the withdrawal of funds so deposited as it shall deem proper. All checks, drafts, vouchers, or other withdrawals of funds from the Trust Fund shall be signed (which may be accomplished by the use of a facsimile signature plate) by at least one (1) Union Trustee and one (1) Employer Trustee.

4.09 Payment of Taxes; Indemnity

The Board of Trustee is empowered to pay out of the Trust, as a general charge thereon, any and all taxes of whatsoever nature assessed on or in respect to the Trust; provided, however, that, if the Plan Sponsor shall notify the Trustee in writing that in the opinion of its counsel any such tax is not lawfully assessed, the Board, if so requested by the Plan Sponsor, shall contest the validity of such tax in any manner deemed appropriate by the Plan Sponsor or its counsel. The word "taxes", as used herein, shall be deemed to include any interest or penalties assessed in respect to such taxes.

Unless the Board of Trustees first shall have been indemnified to its satisfaction by the Plan Sponsor, the Board shall not be required to contest the validity of any tax, to institute, maintain, or defend against any other action or proceeding, or to incur any other expense in connection with the Trust, except to the extent that the Trust is sufficient therefor.

4.10 Records and Statements

The Board of Trustees shall keep accurate records of all receipts, disbursements, and other transactions affecting the Trust which, together with the assets comprising the Trust and all evidences thereof, shall be available for inspection or for the purpose of making copies or reproductions thereof by the Plan Sponsor, the Union, the Administrator, or any of their respective, duly-authorized representatives.

The Board of Trustees shall keep on file minutes of its meetings, a copy of this Trust Agreement, including any subsequent amendments, and all annual reports for examination during reasonable hours by Participants in the Plan.

The Board of Trustees shall render to the Plan Sponsor and the Administrator, at such reasonable intervals as are established by the Administrator, statements of receipts and disbursements and of all transactions during the preceding interval affecting the Trust and a statement of all assets held in the Trust and the investment performance of the Investment Funds. Following the end of each Plan Year, the Plan Sponsor shall certify to the Trustees the amount of Contributions for the preceding Plan Year.

4.11 Authority

The Board of Trustees is authorized to construe the terms of the Trust for the purposes of carrying out the Board's duties hereunder.

The Board of Trustees is authorized to execute and deliver any and all instruments and to perform any and all acts which may be necessary or proper to enable it to discharge its duties under this Trust Agreement and to carry out the powers and authority conferred upon it.

All actions taken or determinations made by the Board of Trustees, within the scope of authority granted to the Board in this Trust Agreement or in the Plan, shall be binding on all persons dealing with the Trust Fund or the Plan.

4.12 Court Action Not Required

All the powers and authority herein conferred upon the Board of Trustees shall be exercised by it without the necessity of applying to any court for leave or confirmation. No person, firm, or corporation dealing with the Board shall be required to ascertain whether the Board shall have obtained the approval of any court or of any person with respect to any action which it may propose to take hereunder, but every such person, firm, or corporation shall be protected in relying solely upon the deed, transfer, or assurance of the Board.

4.13 Reliance on Written Directions

Any written direction, request, approval, or other document signed in the name of the Plan Sponsor or the Administrator by a duly authorized individual shall be conclusively deemed to constitute the written direction, request, approval, or other document of the Plan Sponsor or the Administrator and the Board shall not be liable for any loss, or by reason of any breach, arising from the direction unless it is clear on the direction's face that the actions to be taken under the direction would be prohibited under applicable State or federal law or would be contrary to the terms of the Plan or this Trust Agreement.

4.14 Trustee's Performance

In the exercise of any of the powers and authority herein conferred upon it, the Board of Trustees shall adhere at all times to the fiduciary standards established under applicable law and shall comply with all other applicable Florida and federal laws.

Each fiduciary under the Trust is responsible solely for his/her or its own acts or omissions. A fiduciary does not have any liability for another fiduciary's breach of fiduciary responsibility with respect to the Trust unless the fiduciary: (a) participates knowingly in or undertakes to conceal the breach; (b) has actual knowledge of the breach and fails to take reasonable remedial action to remedy the breach; or (c) through failure to perform his/her or its own specific fiduciary responsibilities that give rise to fiduciary status, the fiduciary has enabled the other fiduciary to commit a breach of the latter's fiduciary responsibility.

4.15 Counsel

The Board of Trustees may consult with counsel selected by it, who may be of counsel for the Plan Sponsor, as to any matters or questions arising under the Trust, and the opinion of such counsel shall be full and complete authority and protection in respect to any action taken, suffered, or omitted by a Trustee in good faith and in accordance with the opinion of such counsel.

4.16 Insurance Contracts

Notwithstanding any other provision of this Trust Agreement or the Plan to the contrary, the Administrator shall retain all discretionary power relating to any annuity, endowment or other form of insurance contract acquired by or delivered to the Board. As directed by the Administrator, the Board will acquire, hold and dispose of insurance contracts, deliver the purchase price, and exercise any and all rights, privileges, options, and elections under those policies. The Board of Trustees will be fully discharged with respect to any policy when it is delivered to the Administrator.

4.17 Rules and Regulations

The Board of Trustees shall have the authority to establish bylaws or additional rules and regulations to operate and construe the Trust, provided that such bylaws or additional rules and regulations are not inconsistent with this Trust Agreement, the Plan, or the Collective Bargaining Agreement and do not enlarge the powers of the Board of Trustees beyond those granted in this Trust Agreement.

4.18 Duties as Special Trustee

The Board is the "Special Trustee" with the duty to collect Employer Contributions. This is the sole duty of the Special Trustee, acting in that capacity. No other trustee has any duty to ensure that the contributions received comply with the provisions of the Plan or is obliged to collect any Contributions from the Employer. No trustee, other than the Special Trustee, is obliged to ensure that funds deposited are deposited according to the provisions of the Plan. The Special Trustee may perform any and all acts which in the Special Trustee's judgment are necessary or appropriate for the proper and advantageous discharge of its responsibilities as Special Trustee. In determining how to discharge any duty to collect Contributions, the Special Trustee should weigh the value of the Plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred.

ARTICLE V
DISBURSEMENTS OUT OF THE TRUST

5.01 Payments

The Board of Trustees shall make payments from the Trust to such persons in such amounts and at such times as the Plan Sponsor or the Administrator from time to time shall direct in writing to be payable under the Plan.

5.02 Compensation and Expenses

The Trustees shall not receive compensation from the Trust for their services but shall be entitled to reimbursement from the Trust for all reasonable expenses properly and actually incurred by the Trustees in their performance of their duties as Trustees.

The Board of Trustees may authorize reimbursement from the Trust for any expenses that the Board determines are both (i) incurred by a Trustee to obtain memberships in professional or educational organizations, or to attend educational programs and other meetings, which are designed to assist the Trustees in the performance of their duties under the Plan or this Trust; and (ii) reasonable under the circumstances (taking into consideration, among other things, that the Plan is a defined contribution plan).

Except as may otherwise be provided in the Plan, compensation payable to third persons who are properly providing services to the Trust or to the Board, and expenses of administering the Plan or Trust, including fees assessed against the Plan, the Trust, the Plan Sponsor, the Board, or the Administrator, shall be funded or paid by the Plan Sponsor. Any fee or expense that the Plan Sponsor pays, directly or indirectly, is not an employer contribution to the Plan, provided the fee or the expense relates to the ordinary and necessary administration of the Trust Fund.

5.03 Return of Contributions to the Sponsor

Upon written notice of the Plan Sponsor, the Board of Trustees shall pay over to the Plan Sponsor the amount of any Contribution (i) made under a mistake of fact, or (ii) disallowed as a deductible contribution under Code Section 404, or (iii) with respect to which the Plan does not qualify initially under Code Section 401(a). In no event shall the Board make such payment later than one year after (x) the payment of the contribution, or (y) the disallowance of the deduction to the extent disallowed, or (z) the date of denial of the initial qualification of the Plan.

5.04 Transfer of Assets from the Trust

Upon written notice from the Plan Sponsor or the Administrator that assets will be transferred from the Plan to another qualified plan (a "transferee plan") with respect to one or more Participants, the Board of Trustees shall segregate the applicable assets from the Trust and shall transfer the applicable assets to the trustee of the "transferee plan" on the specified transfer date, or as soon as practicable thereafter; provided, however, that in the case of a merger, such merger and transfer of assets must not be inconsistent with the Collective Bargaining Agreement and shall be contingent upon receipt of a favorable determination letter or ruling from the IRS with respect to the continued tax-exempt status of the surviving fund after the merger, to the extent it is possible and administratively practicable to obtain such a determination letter or ruling from the IRS. Such transfers shall be in cash or other assets reasonably satisfactory to the trustee of the "transferee plan".

ARTICLE VI
AMENDMENT AND TERMINATION

6.01 Right of Amendment

The Plan Sponsor reserves the right, in its sole discretion, from time to time to amend the provisions of this Trust Agreement in any manner, provided however, that any amendment that is specifically governed by the terms of the Collective Bargaining Agreement must be in compliance therewith. Any such amendment shall be by written instrument executed by the Plan Sponsor and delivered to the Board, and may be made retroactively if in the opinion of the Plan Sponsor such amendment is necessary to enable the Plan and the Trust to meet the requirements of the Code (including the regulations and rulings issued thereunder) or the requirements of any governmental authority.

6.02 Limitation on Amendment

The Plan Sponsor shall make no amendment to this Trust Agreement that results in the forfeiture or reduction of the accrued benefit of any Participant or Beneficiary. Notwithstanding the preceding sentence, nothing herein contained shall restrict the right to amend the provisions of this Trust Agreement relating to the administration of the Plan and the Trust; provided however, that the amendment of any provision that is specifically governed by the Collective Bargaining Agreement must be in compliance therewith. Moreover, no such amendment shall be made under this Article which shall permit any part of the Trust to revert to the Plan Sponsor or to be used for or be diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries.

6.03 Termination

The Plan Sponsor shall have the sole authority to terminate this Trust, provided however, that termination must not be inconsistent with the terms of the Collective Bargaining Agreement.

Upon termination of the Trust, the Trustees shall continue in such capacity for the purpose of dissolution with full powers as provided for in this Trust and may execute any and all documents which may be required for such purpose.

VII
MISCELLANEOUS

7.01 Validity of Trust Agreement

No provision of this Trust shall be construed to conflict with any provision of the Treasury Department or Internal Revenue Service regulation, ruling, release, or other order which affects, or could affect the terms of the Plan or this Trust, or the qualification of the Plan under Section 401 of the Internal Revenue Code, as amended. For this sole purpose, all of the provisions of this Trust shall be deemed conditional and this Trust shall be amended to conform at the earliest practical date after promulgation or publication of any applicable regulation, ruling, release, or order. This Trust shall be construed, administered and enforced in accordance with applicable federal law, including the Internal Revenue Code, and any applicable law of the State of Florida.

In the event that any provision of this Trust Agreement shall be held unlawful or invalid for any reason, then the Trust Agreement shall be construed and enforced as if the unlawful or invalid portions had not been included.

7.02 No Guarantees

The Plan Sponsor, the Union, the Board of Trustees, the Funding Agent, and the Administrator do not guarantee the Trust from loss or depreciation, nor do they guarantee the payment of any amount which may become due to any person hereunder.

7.03 Duty to Furnish Information

The Plan Sponsor, the Union, the Board of Trustees, the Funding Agent, and the Administrator shall furnish to any of the others any documents, reports, returns, statements, or other information that such other entity reasonably deems necessary to perform its duties imposed under the Plan or this Trust Agreement or otherwise imposed by law.

7.04 Withholding

The Board of Trustees shall withhold any Federal, state, or local tax which by any present or future law is required to be withheld from any payment under the Plan, unless the Plan Sponsor shall have notified the Board in writing to the effect that the Plan Sponsor, the Funding Agent, or another responsible party has withheld such tax.

7.05 Parties Bound

This Trust Agreement shall be binding upon the parties hereto, the Administrator, the Funding Agent, the Union, all Participants and Beneficiaries, and persons claiming under or through them pursuant to the Plan, and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.

7.06 Notices

Any notice or other communication among the Plan Sponsor, the Union, the Trustees, the Funding Agent, and the Administrator that is stipulated under this Trust to be made in writing may be made in any medium that is acceptable to the receiving party and permitted under applicable law. In all events, any notice or other communication given pursuant to this Trust Agreement shall always be effective if sent by registered or certified mail addressed to the recipient's last address of record.

This restated LYNX DEFINED CONTRIBUTION TRUST FOR BU EMPLOYEES AGREEMENT AND DECLARATION OF TRUST is executed this ___ day of __________, 2022 at ____ by:

Plan Sponsor:

CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY

By: ______________________________

Print Name: ______________________

Print Title: ________________________

The undersigned hereby consents to appointment as a Trustee under the restated LYNX DEFINED CONTRIBUTION TRUST FOR BU EMPLOYEES AGREEMENT AND DECLARATION OF TRUST, and agrees to perform the duties and responsibilities as Trustee and as a named fiduciary under the Trust.

Executed this ____ day of _______________, 2022 at ____.

Trustee:

____

Print Name: _________________________

Check one: ___ Employer-appointed Trustee or
___ Union-appointed Trustee

LYNX Finance & Audit Committee Agenda

Action Agenda Item #6.A.

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
Michelle Daley
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization to Enter into the FY2023 Service Funding Agreements with the Regional Funding Partners**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to enter into funding agreements with the Regional Funding Partners listed below for the provision of public transportation services corresponding with its respective funding contribution for the Fiscal Year 2023 Budget.

To the extent there are any changes to the funding agreements, LYNX staff will negotiate those changes through an amendment to the addendum. This will allow the Chief Executive Officer or designee to enter into those funding agreements without further Board approval

BACKGROUND:

The Counties of Orange, Osceola and Seminole (hereinafter, the Regional Funding Partners) all recognize the need to provide public transportation services in an efficient manner and acknowledge the benefits of increased ridership on the regional public transportation system.

LYNX and the Regional Funding Partners desire to formally enter into service funding agreements to establish the most prudent utilization of resources and to target service improvements based upon traffic, levels of service, transit operations, and customer demand considerations.

The services and enhancements, which will be made and approved in this agreement, are in conformance with the LYNX Transportation Development Program (TDP).

The funding partner agreement for FY2023 contains the following:

a) A uniform funding agreement for all funding partners.
b) A provision that allows for continued monthly or quarterly payments by the funding partners subsequent to the end of each fiscal year.
c) An "addendum" to the contract that will provide for particular or unique requirements by the various funding partners.

A copy of the proposed service funding agreement that will be entered into between LYNX and each of the Regional Funding Partners for Fiscal Year 2023 is attached. Authorization is requested from the Board for LYNX staff to complete the funding agreement with each funding partner, including completion of the exhibits and addenda incorporating all edits agreed upon by all funding partners. This will permit the funding agreements to be executed more quickly after the beginning of LYNX's fiscal year. Changes will be permitted to the funding agreement by way of changes to the addendum provided that said changes are not materially adverse to LYNX.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

Please reference the following Exhibit "C", which is included in each of the Regional Funding Partners' Agreements.

23-C07 Service Funding Agreement
by and between
Orange County, Florida
and
Central Florida Regional Transportation Authority

THIS SERVICE FUNDING AGREEMENT ("Agreement") is made and entered into by and between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, whose principal address is Post Office Box 1393, Orlando, Florida 32802-1393 (hereinafter the "**Funding Partner**"), and the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate created pursuant to Part III, 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 an Interlocal Agreement for Public Transit Services dated as of October 26, 2021 (the "**Prior Fiscal Year Funding Agreement**") pursuant to which the Funding Partner agreed to appropriate funds to LYNX for

fiscal year from October 1, 2021 to September 30, 2022 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, 2022; and

WHEREAS, the Funding Partner has budgeted funds for the fiscal year beginning on October 1, 2022 and ending on September 30, 2023 ("**Fiscal Year**") to support LYNX's Public Transportation services for such fiscal year; and

WHEREAS, LYNX and the Funding Partner wish to acknowledge that appropriate methodology has been used to determine the recommended level of funding by each Funding Partner; 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 only within the Service Area (as hereinafter defined).

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 meetings:

"**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 and Addenda.

"**Appropriated Amount**" means the amount to be paid to LYNX by the Funding Partner for the Current Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder, as set forth in Paragraph 3 hereof.

"**Current Fiscal Year**" shall mean the fiscal year beginning on October 1, 2022 and ending on September 30, 2023.

"**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).

"Demand Response Service" or "NeighborLink" means service provided in response to passenger requests made in advance to LYNX, which then dispatches a vehicle to pick up the

passengers and transport them to their destinations or to a fixed-route transfer point within a designated demand response service area.

"**Fiscal Year**" or "**Current Fiscal Year**" means the twelve (12) month period commencing October 1, 2022 and ending the following September 30, 2023.

"**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.

"**FDOT**" means the Florida Department of Transportation.

"**FTA**" means the Federal Transit Association.

"**New Appropriated Amount**" means the amount that is approved or appropriated by the Funding Partner for the Next Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder for the Next Fiscal Year, as set forth in Paragraph 3 below.

"**Next Fiscal Year**" means the twelve (12) month period immediately following the Current Fiscal Year, and is the period commencing October 1, 2023 and ending the following September 30, 2024.

"**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 of the Fixed-Route Service, as the case may be, described and set forth in **Exhibit "A"** attached hereto.

3. **Funding Partner Obligations**.

(a) **Current Fiscal Year.**

(i) The Funding Partner agrees to appropriate the amount specified on **Exhibit "B"** attached hereto (the "**Appropriated Amount**") to LYNX for the Fiscal Year for the provision of Public Transportation within the Service Area.

(ii) The Appropriated Amount shall be paid by the Funding Partner to LYNX in twelve (12) equal monthly installments, with each installment being due on the first day of each month. The first installment payment shall be due upon the later of (x) October 1, 2022 or (y) thirty (30) days after the execution date of this Agreement; and any other installment payments which would be due prior to the execution date of this Agreement shall also be paid within thirty (30) days after the execution date of this Agreement.

(iii) In the event that the Appropriated Amount is less than the amount suggested by the Funding Model to fully fund the agreed upon service level in the Funding Partner's Service Area, or in the event that the Appropriated Amount is less than the actual cost to fully fund the agreed upon service level in the Funding Partner's Service Area, LYNX may, at its discretion, (x) utilize reserves to fund the difference and continue to provide the requested service level, or (y) reduce the service level in the Funding Partner's Service Area to a level equivalent to the Appropriated Amount. However, in the event clause (x) is applicable, then the Funding Partner will promptly pay said difference to LYNX within thirty (30) days after the execution date of this Agreement.

(iv) In regard to Paragraph 3(a)(ii), above, for each monthly installment, LYNX will invoice the Funding Partner on a monthly basis and said amount shall be paid within thirty (30) days after the receipt by the Funding Partner of said invoice. However, in regard to any monthly installments that remain unpaid prior to the execution of this Agreement, those unpaid monthly installments (for which LYNX will furnish the Funding Partner invoices) will be paid within thirty (30) days after the execution date of the Agreement.

(b) **Next Fiscal Year.** If, prior to the termination date of this Agreement (as set forth in Paragraph 20 below), the Funding Partner and LYNX have not reached a written agreement setting forth an appropriation to LYNX for the Next Fiscal Year, then, notwithstanding the expiration of this Agreement at the end of the Current Fiscal Year and in order to continue the Public Transportation after said expiration, the Funding Partner shall continue to pay LYNX for the Next Fiscal Year the amount set forth below:

(i) The amount to be paid shall be the Appropriated Amount for the Current Fiscal Year. This Appropriated Amount for the Current Fiscal Year (the "**Post-Termination Payment**") shall be paid as provided herein.

(ii) LYNX will prepare and submit invoices for the Post Termination Payments and the Funding Partner will make such Post-Termination Payments within thirty (30) days after its receipt of such invoices from LYNX.

(iii) The Post Termination Payment shall be paid in equal monthly installments due on the first day of each month commencing October 1, 2023 until the earliest to occur of the following: (x) LYNX and the Funding Partner reach a written agreement setting forth a different appropriation for the Next Fiscal Year; (y) one hundred twenty (120) days following the 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 receives from LYNX the Public Transportation services provided herein; or (z) the date that LYNX actually discontinues the Public Transportation services to the Funding Partner, at which time this Agreement and specifically the provisions of this Subparagraph 3(b) will no longer be applicable. 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. If this Subparagraph 3(b) is applicable, the parties will reconcile the difference between the amount that was paid by the Funding Partner and the amount that has been agreed upon for the Next Fiscal Year in the first month following the earliest of the occurrences set forth above.

(iv) If a written agreement for the Next Fiscal Year is not entered into between LYNX and the Funding Partner by November 30 of the Next Fiscal Year, then, in that event, LYNX will undertake the necessary procedure for the discontinuation of the service which process takes approximately one hundred and twenty (120) days. If a new Funding Agreement for the Next Fiscal Year is not entered into by January 31 of the Next Fiscal Year, then LYNX may discontinue the service in accordance with its policies and the Funding Partner will in any event pay for any service provided for the Next Fiscal Year, including any service that may be provided of necessity by LYNX after January 31 in accordance with its procedures.

(c) 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. **<u>LYNX Obligations</u>**.

(a) **<u>Service</u>**. 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 two percent (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.

To the extent that there is any increase or decrease of Fixed-Route Service hours greater than two percent (2%) (which would require approval of the Funding Partner), then, in that case, there will be a corresponding increase or decrease in the Appropriated Amount to be paid to LYNX by the Funding Partner from and after said increase or decrease is put into effect.

(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 Transportation Planning Division and Office of Management & Budget 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, Demand Response 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 are plus or minus 10% and 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. The following criteria will be utilized to determine this amount:

(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) Funding Model Information. Attached hereto as **<u>Exhibit "C"</u>** is a schedule listing including the following:

(A) All of LYNX's funding partners;

(B) The amount of funding required of each funding partner by the Funding Model for the Current Fiscal Year; and

(C) The amount each funding partner actually budgeted for the Current Fiscal Year to contribute for the services contemplated in the LYNX Funding Model.

(D) LYNX shall provide quarterly updates to **<u>Exhibit "C"</u>** by listing the amount each funding partner has paid to LYNX to date.

(viii) The amount of fund balance allocated to reserves.

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

(c) **<u>Additional Reporting</u>**. 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. **<u>Independent Contractor</u>**. 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. In the event the Funding Partner is the Breaching Party, the Funding Partner will nonetheless continue to pay to LYNX for any fixed route service furnished by LYNX up to the actual date that LYNX terminates said fixed route service, taking into account the policies and procedures to be followed by LYNX to terminate bus service generally (but not to exceed one hundred twenty (120) days).

(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 one hundred twenty (120) days receipt of written notice of termination from the party desiring to terminate this Agreement or such later date as specified in the notice.

The provisions of this Paragraph 7 are further subject to the provisions of Subparagraph 3(c) above as to the rights of the parties to terminate this Agreement after the end of any fiscal year as provided in said Paragraph 3(c).

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.** If LYNX has questions regarding the application of Chapter 119, Florida Statues, to LYNX's duty to provide public records relating to this agreement, contact the funding partner's custodian of public records at**:**

Orange County Comptroller's Office
109 E. Church Street, Suite 300
Orlando, FL 32801
407-836-5115
comptroller@occompt.com

LYNX understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If LYNX will act on behalf of the Funding Partner, as provided under section 119.011(2), Florida Statutes, LYNX, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

(a) Keep and maintain public records required by the Funding Partner to perform the service.

(b) Upon request from the Funding Partner's custodian of public records, provide the Funding Partner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if LYNX does not transfer the records to the Funding Partner.

(d) Subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, upon completion of the contract, transfer, at no cost, to the Funding Partner all public records in possession of the LYNX or keep and maintain public records required by the Funding Partner to perform the service. If LYNX transfers all public records to the Funding Partner upon completion of the contract, LYNX shall, subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LYNX keeps and maintains public records upon completion of the contract, LYNX shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Funding Partner, upon request from the Funding Partner's custodian of public records, in a format that is compatible with the information technology systems of the Funding Partner.

(e) If LYNX does not comply with a public records request, the Funding Partner shall enforce the contract provisions in accordance with the Agreement.

10. **<u>Record Keeping Procedure</u>**. 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. **Compliance with FTA/FDOT Requirements**. The provisions of this Agreement, and the Public Transportation to be provided by LYNX hereunder, is subject at all times to the applicable statutes and rules and regulations of all applicable governmental authorities, including those of the FTA and FDOT. In the event any such statutes or rules or regulations would require a substantial and material change to this Agreement, then the parties will immediately meet to review and make acceptable adjustments to this Agreement so as to comply with such statutes and rules and regulations.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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:	Orange County P.O. Box 1393 Orlando, Florida 32802-1393 Attn: Byron W. Brooks, AICP, County Administrator
With copy to:	Transportation Planning Division 4200 S. John Young Parkway Orlando, Florida 32839 Renzo.nastasi@ocfl.net Attn: Manager, Transportation Planning
With copy to:	Orange County Office of Management and Budget P.O. Box 1393 Orlando, Florida 32802-1393 Attn: Director, OMB
As to LYNX:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer
With copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Leonard Antmann, Chief Financial Officer
With a copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Carrie L. Sarver, Esq., B.C.S., Senior In-House Counsel

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

20. **Effective Date.** The effective date of this Agreement shall be October 1, 2022. Unless terminated earlier in accordance with Paragraph 7 of this Agreement, this Agreement will terminate on September 30, 2023, except for the provisions of this Agreement which by their terms survive the termination of this Agreement.

21. **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.

22. **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.

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 (NA) 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

ATTEST:

Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: ______________________________
Deputy Clerk

FUNDING PARTNER:

BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA

By: ______________________________
Jerry L. Demings, County Mayor

Date: ______________________________

SIGNATURE PAGE FOR LYNX

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By: ______________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: ______________________________

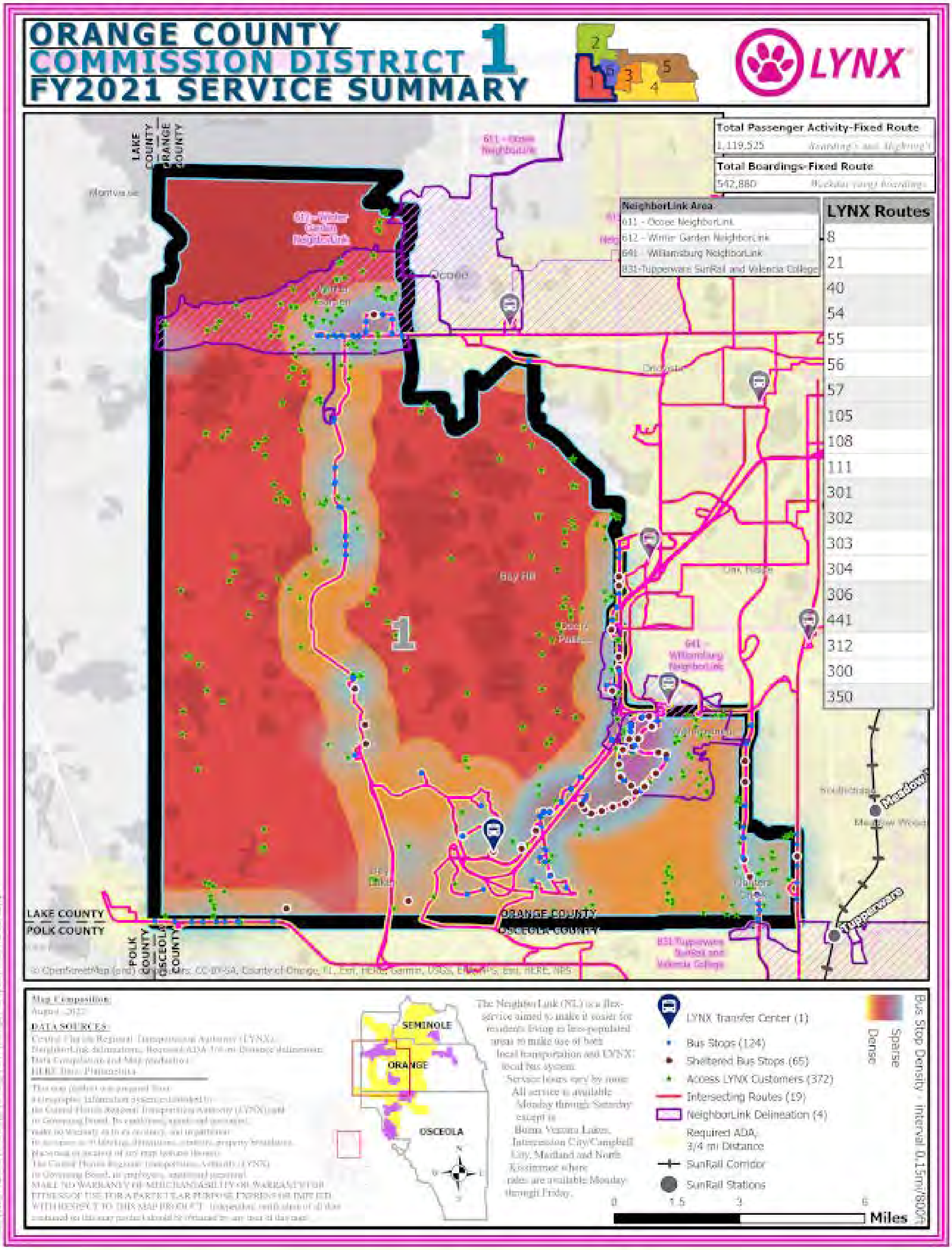
This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ________________________________
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel

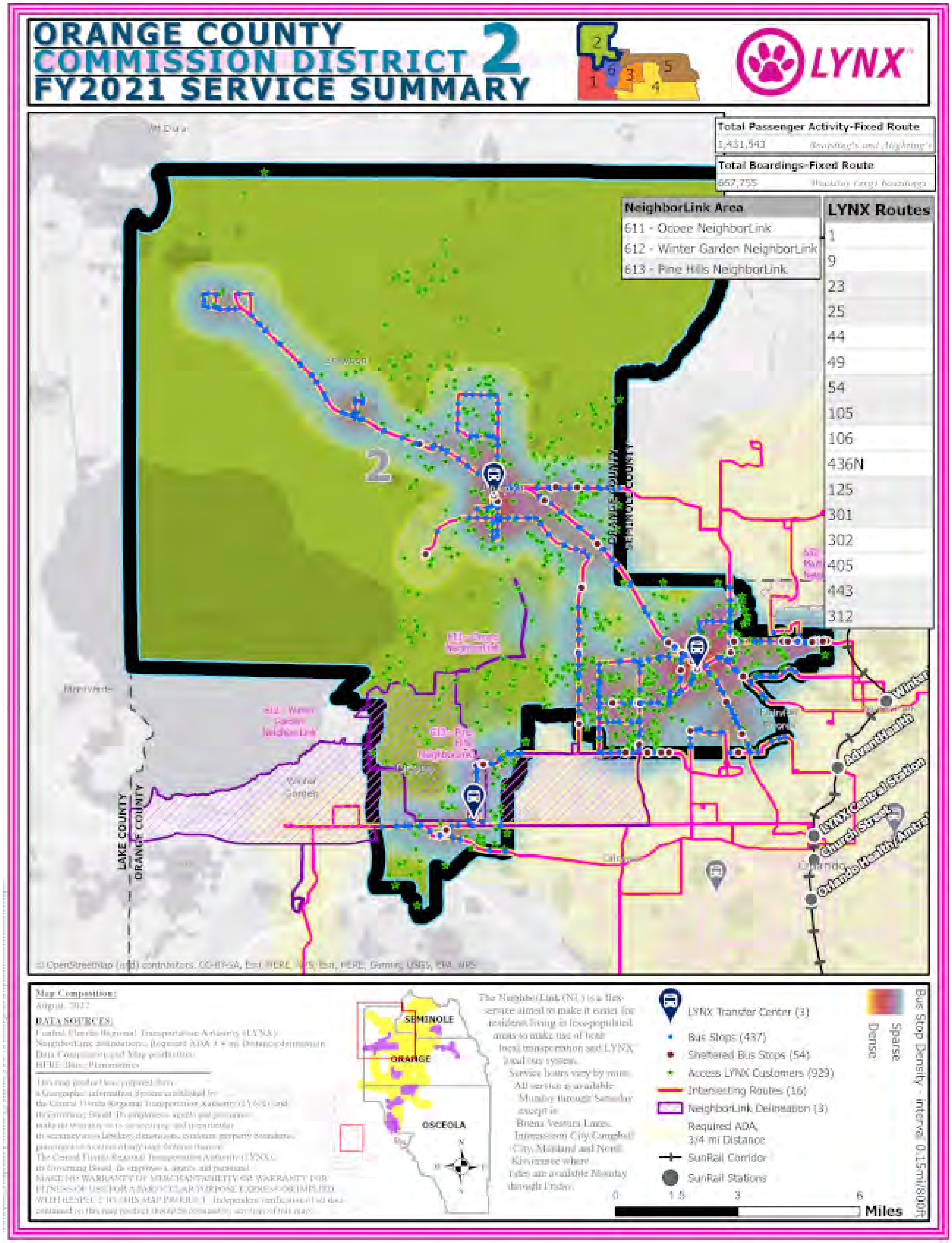
Date:________________________________

Exhibit "A"

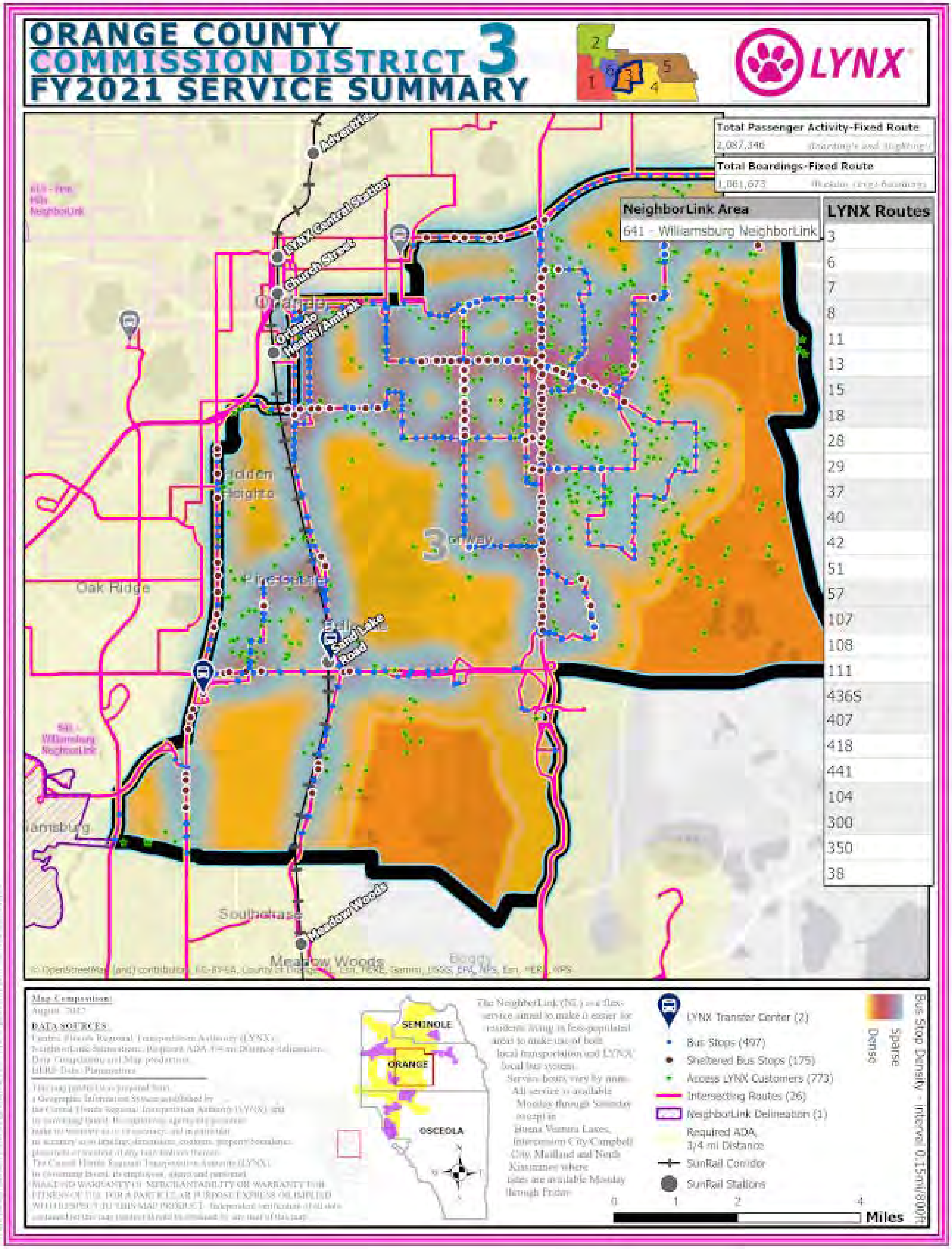
DESCRIPTION OF SERVICE AREA



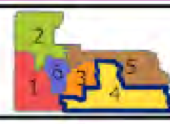
23-C07



ORANGE COUNTY
COMMISSION DISTRICT 2
FY2021 SERVICE SUMMARY
LYNX
Total Passenger Activity-Fixed Route
1,431,543
Total Boardings-Fixed Route
667,755
NeighborLink Area
611 - Ocoee NeighborLink
612 - Winter Garden NeighborLink
613 - Pine Hills NeighborLink
LYNX Routes
1
9
23
25
44
49
54
105
106
436N
125
301
302
405
443
312
ORANGE COUNTY
SEMINOLE COUNTY
LAKE COUNTY
ORANGE COUNTY
SEMINOLE
ORANGE
OSCEOLA
LYNX Transfer Center (3)
Bus Stops (437)
Sheltered Bus Stops (54)
Access LYNX Customers (929)
Intersecting Routes (16)
NeighborLink Delineation (3)
Required ADA, 3/4 mi Distance
SunRail Corridor
SunRail Stations
Bus Stop Density - interval 0.15mi/800ft
Sparse
Dense
0
1.5
3
6
Miles


ORANGE COUNTY
COMMISSION DISTRICT 3
FY2021 SERVICE SUMMARY
LYNX
Total Passenger Activity-Fixed Route
2,087,346
Total Boardings-Fixed Route
1,061,673
NeighborLink Area
641 - Williamsburg NeighborLink
LYNX Routes
3
6
7
8
11
13
15
18
28
29
37
40
42
51
57
107
108
111
436S
407
418
441
104
300
350
38
AdventHealth
LYNX Central Station
Church Street
Orlando Health/Amtrak
Sand Lake Road
Meadow Woods
Oak Ridge
Southchase
SEMINOLE
ORANGE
OSCEOLA
Map Composition:
DATA SOURCES:
LYNX Transfer Center (2)
Bus Stops (497)
Sheltered Bus Stops (175)
Access LYNX Customers (773)
Intersecting Routes (26)
NeighborLink Delineation (1)
Required ADA, 3/4 mi Distance
SunRail Corridor
SunRail Stations
Sparse
Dense
Bus Stop Density - Interval 0.15mi/800ft
0 1 2 4
Miles

ORANGE COUNTY COMMISSION DISTRICT 4 FY2021 SERVICE SUMMARY

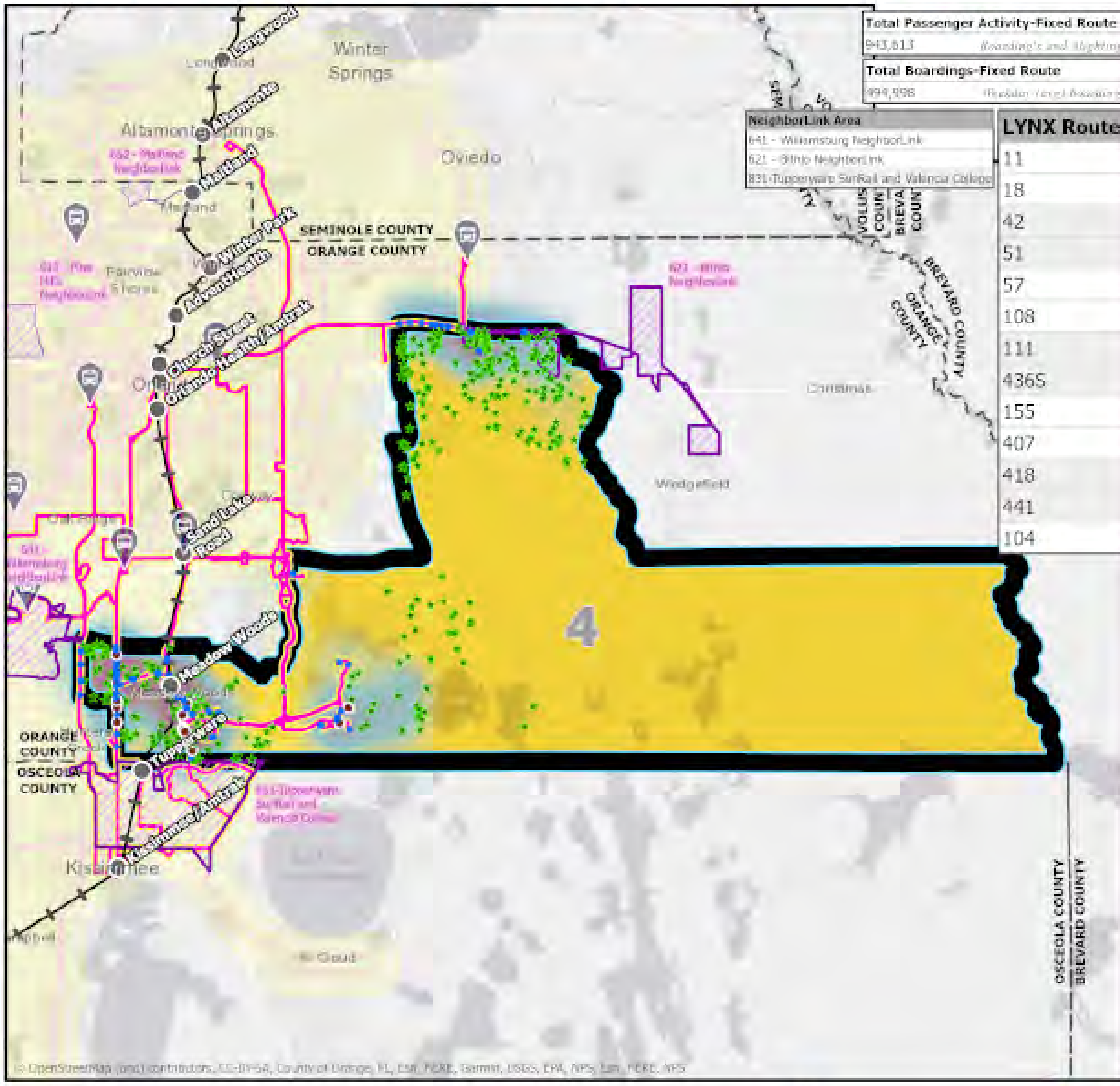


Total Passenger Activity-Fixed Route	
943,613	Boarding's and Alighting's

Total Boardings-Fixed Route	
499,998	(Regular Fare) Boardings

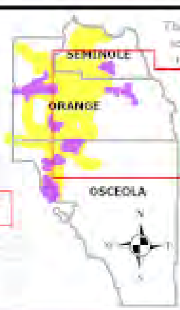
NeighborLink Area
641 - Williamsburg NeighborLink
621 - Bithlo NeighborLink
831-Tupperware SunRail and Valencia College

LYNX Routes
11
18
42
51
57
108
111
436S
155
407
418
441
104



Map Composition:
August, 2022

DATA SOURCES:
Central Florida Regional Transportation Authority (LYNX);
HERE Data; Planimetrics

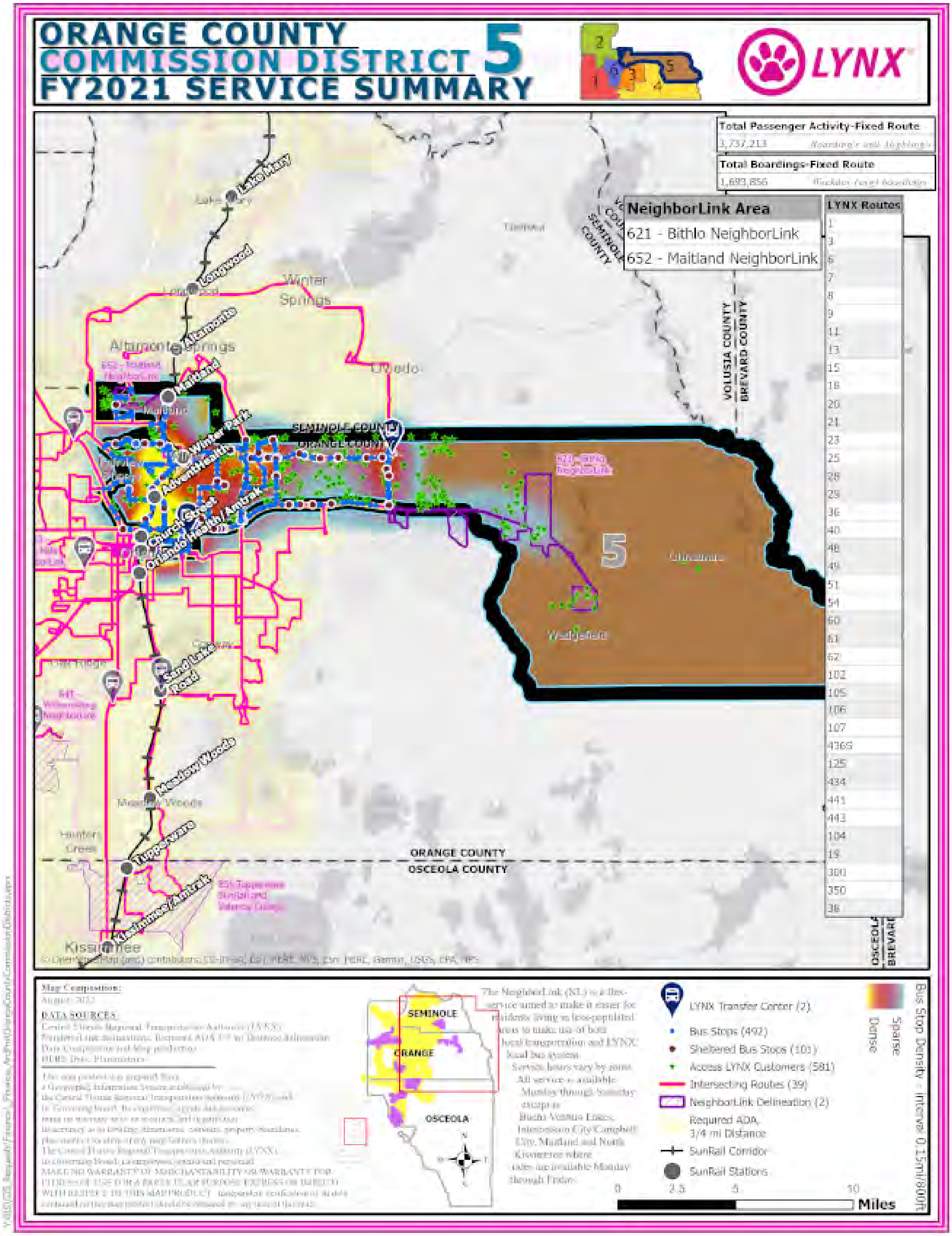


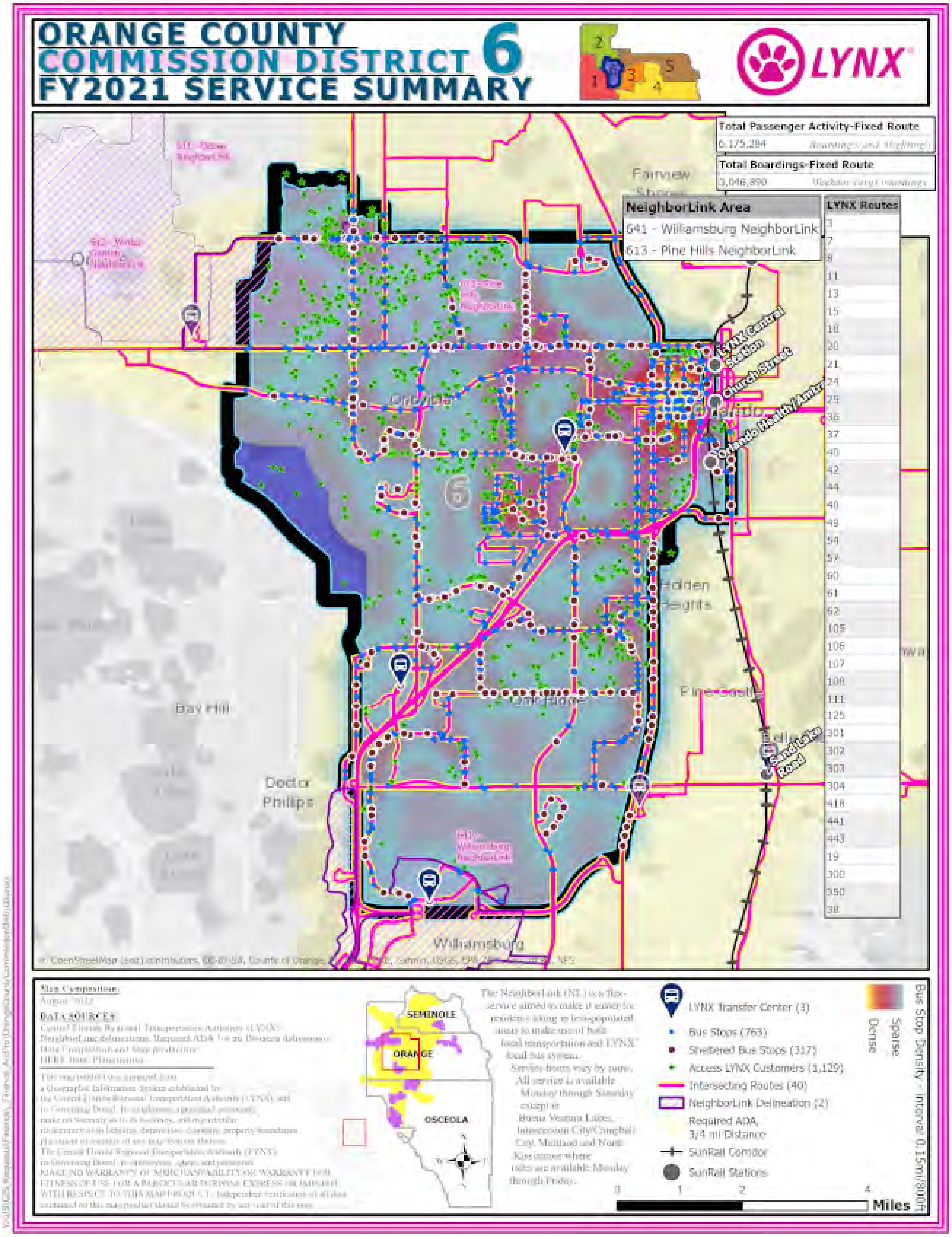
The NeighborLink (NL) is a flex-service aimed to make it easier for residents living in less-populated areas to make use of both local transportation and LYNX' local bus system. Service hours vary by zone. All service is available Monday through Saturday except in Buena Ventura Lakes, Intercession City/Campbell City, Maitland and North Kissimmee where rides are available Monday through Friday.

- LYNX Transfer Center (0)
- Bus Stops (77)
- Sheltered Bus Stops (15)
- Access LYNX Customers (459)
- Intersecting Routes (13)
- NeighborLink Delineation (3)
- Required ADA, 3/4 mi Distance
- SunRail Corridor
- SunRail Stations

Bus Stop Density - interval 0.15mi/800ft
Dense
Sparse

0 2.75 5.5 11 Miles


ORANGE COUNTY
COMMISSION DISTRICT 5
FY2021 SERVICE SUMMARY
LYNX
Total Passenger Activity-Fixed Route
3,737,213
Total Boardings-Fixed Route
1,693,856
NeighborLink Area
621 - Bithlo NeighborLink
652 - Maitland NeighborLink
LYNX Routes
1
3
6
7
8
9
11
13
15
18
20
21
23
25
28
29
36
40
48
49
51
54
60
61
62
102
105
106
107
436S
125
434
441
443
104
19
300
350
38
VOLUSIA COUNTY
BREVARD COUNTY
SEMINOLE COUNTY
ORANGE COUNTY
OSCEOLA COUNTY
Lake Mary
Longwood
Winter Springs
Altamonte Springs
Oviedo
Maitland
Winter Park
AdventHealth
Church Street
Orlando Health/Amtrak
Sand Lake Road
Meadow Woods
Tupperware
Kissimmee/Amtrak
Kissimmee
Conway
Hunters Creek
Wedgefield
5
Map Composition:
DATA SOURCES:
SEMINOLE
ORANGE
OSCEOLA
LYNX Transfer Center (2)
Bus Stops (492)
Sheltered Bus Stops (101)
Access LYNX Customers (581)
Intersecting Routes (39)
NeighborLink Delineation (2)
Required ADA, 3/4 mi Distance
SunRail Corridor
SunRail Stations
Bus Stop Density - Interval 0.15mi/800ft
Dense
Sparse
0
2.5
5
10
Miles



ORANGE COUNTY
COMMISSION DISTRICT 6
FY2021 SERVICE SUMMARY
LYNX
Total Passenger Activity-Fixed Route
6,175,284
Total Boardings-Fixed Route
3,046,890
NeighborLink Area
641 - Williamsburg NeighborLink
613 - Pine Hills NeighborLink
LYNX Routes
3
7
8
11
13
15
18
20
21
24
25
36
37
40
42
44
48
49
54
57
60
61
62
105
106
107
108
111
125
301
302
303
304
418
441
443
19
300
350
38
Fairview Shores
LYNX Central Station
Church Street
Orlando Health/Amtrak
Orlando
Holden Heights
Pine Castle
Oak Ridge
Sand Lake Road
Bay Hill
Doctor Phillips
Williamsburg
Belle Isle
SEMINOLE
ORANGE
OSCEOLA
Map Composition:
DATA SOURCES
LYNX Transfer Center (3)
Bus Stops (763)
Sheltered Bus Stops (317)
Access LYNX Customers (1,129)
Intersecting Routes (40)
NeighborLink Delineation (2)
Required ADA, 3/4 mi Distance
SunRail Corridor
SunRail Stations
Bus Stop Density - Interval 0.15mi/800ft
Sparse
Dense
0 1 2 4
Miles

Exhibit "B"

Orange County Transit Service Costs

Description of Appropriated Amount
October 1, 2022 through September 30, 2023

FY2023 Billing Schedule

October-22	$5,176,133
November-22	$5,176,133
December-22	$5,176,133
January-23	$5,176,133
February-23	$5,176,133
March-23	$5,176,133
April-23	$5,176,133
May-23	$5,176,133
June-23	$5,176,133
July-23	$5,176,133
August-23	$5,176,133
September-23	$5,176,136
Annual Funding Request from County	**$62,113,599**

Exhibit "C"
Schedule Listing of LYNX Funding Partners

		FY2023 Funding Agreement
Operating Funding		
Orange County	$	59,280,043
Osceola County		10,464,246
Seminole County		10,248,484
Subtotal	$	79,992,773
City of Orlando	$	4,003,006
City of Orlando - LYMMO		2,861,057
FDOT (SunRail Feeder Route)		1,713,747
Reedy Creek		441,445
Altamonte Springs		120,900
City of Sanford		93,000
Subtotal	$	9,233,155
Subtotal Operating Funding	$	89,225,928
Capital Contributions		
Orange County	$	2,833,556
Osceola County		417,228
Seminole County		376,712
Subtotal	$	3,627,496
Total Local Funds	$	92,853,424

23-C08 Service Funding Agreement
by and between
Osceola County, Florida
and
Central Florida Regional Transportation Authority

THIS SERVICE FUNDING AGREEMENT ("Agreement") is made and entered into by and between **OSCEOLA COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, whose principal address is 1 Courthouse Square, Kissimmee, Florida 34741 (hereinafter the "**Funding Partner**"), and the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate created pursuant to Part III, 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 an Interlocal Agreement for Public Transit Services dated as of October 18, 2021 (the "**Prior Fiscal Year Funding Agreement**") pursuant to which the Funding Partner agreed to appropriate funds to LYNX for

fiscal year from October 1, 2021 to September 30, 2022 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, 2022; and

WHEREAS, the Funding Partner has budgeted funds for the fiscal year beginning on October 1, 2022 and ending on September 30, 2023 ("**Fiscal Year**") to support LYNX's Public Transportation services for such fiscal year; and

WHEREAS, LYNX and the Funding Partner wish to acknowledge that appropriate methodology has been used to determine the recommended level of funding by each Funding Partner; 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 only within the Service Area (as hereinafter defined).

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 meetings:

"**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 and Addenda.

"**Appropriated Amount**" means the amount to be paid to LYNX by the Funding Partner for the Current Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder, as set forth in Paragraph 3 hereof.

"**Current Fiscal Year**" shall mean the fiscal year beginning on October 1, 2022 and ending on September 30, 2023.

"**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).

"Demand Response Service" or "NeighborLink" means service provided in response to passenger requests made in advance to LYNX, which then dispatches a vehicle to pick up the

passengers and transport them to their destinations or to a fixed-route transfer point within a designated demand response service area.

"**Fiscal Year**" or "**Current Fiscal Year**" means the twelve (12) month period commencing October 1, 2022 and ending the following September 30, 2023.

"**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.

"**FDOT**" means the Florida Department of Transportation.

"**FTA**" means the Federal Transit Association.

"**New Appropriated Amount**" means the amount that is approved or appropriated by the Funding Partner for the Next Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder for the Next Fiscal Year, as set forth in Paragraph 3 below.

"**Next Fiscal Year**" means the twelve (12) month period immediately following the Current Fiscal Year, and is the period commencing October 1, 2023 and ending the following September 30, 2024.

"**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 of the Fixed-Route Service, as the case may be, described and set forth in **Exhibit "A"** attached hereto.

3. **Funding Partner Obligations**.

(a) **Current Fiscal Year.**

(i) The Funding Partner agrees to appropriate the amount specified on **Exhibit "B"** attached hereto (the "**Appropriated Amount**") to LYNX for the Fiscal Year for the provision of Public Transportation within the Service Area.

(ii) The Appropriated Amount shall be paid by the Funding Partner to LYNX in twelve (12) equal monthly installments, with each installment being due on the first day of each month. The first installment payment shall be due upon the later of (x) October 1, 2022 or (y) thirty (30) days after the execution date of this Agreement; and any other installment payments which would be due prior to the execution date of this Agreement shall also be paid within thirty (30) days after the execution date of this Agreement.

(iii) In the event that the Appropriated Amount is less than the amount suggested by the Funding Model to fully fund the agreed upon service level in the Funding Partner's Service Area, or in the event that the Appropriated Amount is less than the actual cost to fully fund the agreed upon service level in the Funding Partner's Service Area, LYNX may, at its discretion, (x) utilize reserves to fund the difference and continue to provide the requested service level, or (y) reduce the service level in the Funding Partner's Service Area to a level equivalent to the Appropriated Amount. However, in the event clause (x) is applicable, then the Funding Partner will promptly pay said difference to LYNX within thirty (30) days after the execution date of this Agreement.

(iv) In regard to Paragraph 3(a)(ii), above, for each monthly installment, LYNX will invoice the Funding Partner on a monthly basis and said amount shall be paid within thirty (30) days after the receipt by the Funding Partner of said invoice. However, in regard to any monthly installments that remain unpaid prior to the execution of this Agreement, those unpaid monthly installments (for which LYNX will furnish the Funding Partner invoices) will be paid within thirty (30) days after the execution date of the Agreement.

(b) **Next Fiscal Year.** If, prior to the termination date of this Agreement (as set forth in Paragraph 20 below), the Funding Partner and LYNX have not reached a written agreement setting forth an appropriation to LYNX for the Next Fiscal Year, then, notwithstanding the expiration of this Agreement at the end of the Current Fiscal Year and in order to continue the Public Transportation after said expiration, the Funding Partner shall continue to pay LYNX for the Next Fiscal Year the amount set forth below:

(i) The amount to be paid shall be the Appropriated Amount for the Current Fiscal Year. This Appropriated Amount for the Current Fiscal Year (the "**Post-Termination Payment**") shall be paid as provided herein.

(ii) LYNX will prepare and submit invoices for the Post Termination Payments and the Funding Partner will make such Post-Termination Payments within thirty (30) days after its receipt of such invoices from LYNX.

(iii) The Post Termination Payment shall be paid in equal monthly installments due on the first day of each month commencing October 1, 2023 until the earliest to occur of the following: (x) LYNX and the Funding Partner reach a written agreement setting forth a different appropriation for the Next Fiscal Year; (y) one hundred twenty (120) days following the 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 receives from LYNX the Public Transportation services provided herein; or (z) the date that LYNX actually discontinues the Public Transportation services to the Funding Partner, at which time this Agreement and specifically the provisions of this Subparagraph 3(b) will no longer be applicable. 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. If this Subparagraph 3(b) is applicable, the parties will reconcile the difference between the amount that was paid by the Funding Partner and the amount that has been agreed upon for the Next Fiscal Year in the first month following the earliest of the occurrences set forth above.

(iv) If a written agreement for the Next Fiscal Year is not entered into between LYNX and the Funding Partner by November 30 of the Next Fiscal Year, then, in that event, LYNX will undertake the necessary procedure for the discontinuation of the service which process takes approximately one hundred and twenty (120) days. If a new Funding Agreement for the Next Fiscal Year is not entered into by January 31 of the Next Fiscal Year, then LYNX may discontinue the service in accordance with its policies and the Funding Partner will in any event pay for any service provided for the Next Fiscal Year, including any service that may be provided of necessity by LYNX after January 31 in accordance with its procedures.

(c) 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 two percent (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.

To the extent that there is any increase or decrease of Fixed-Route Service hours greater than two percent (2%) (which would require approval of the Funding Partner), then, in that case, there will be a corresponding increase or decrease in the Appropriated Amount to be paid to LYNX by the Funding Partner from and after said increase or decrease is put into effect.

(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 Office of Regional Mobility 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, Demand Response 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 are plus or minus 10% and 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. The following criteria will be utilized to determine this amount.

(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) Funding Model Information. Attached hereto as **Exhibit "C"** is a schedule listing including the following:

(A) All of LYNX's funding partners;

(B) The amount of funding required of each funding partner by the Funding Model for the Current Fiscal Year; and

(C) The amount each funding partner actually budgeted for the Current Fiscal Year to contribute for the services contemplated in the LYNX Funding Model.

(D) LYNX shall provide quarterly updates to **Exhibit "C"** by listing the amount each funding partner has paid to LYNX to date.

(viii) The amount of fund balance allocated to reserves.

(ix) 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. In the event the Funding Partner is the Breaching Party, the Funding Partner will nonetheless continue to pay to LYNX for any fixed route service furnished by LYNX up to the actual date that LYNX terminates said fixed route service, taking into account the policies and procedures to be followed by LYNX to terminate bus service generally (but not to exceed one hundred twenty (120) days).

(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 one hundred twenty (120) days receipt of written notice of termination from the party desiring to terminate this Agreement or such later date as specified in the notice.

The provisions of this Paragraph 7 are further subject to the provisions of Subparagraph 3(c) above as to the rights of the parties to terminate this Agreement after the end of any fiscal year as provided in said Paragraph 3(c).

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.** If LYNX has questions regarding the application of Chapter 119, Florida Statues, to LYNX's duty to provide public records relating to this agreement, contact the funding partner's custodian of public records at**:**

Public Information Office
1 Courthouse Square
Kissimmee, FL 34741
407-742-0100
BCCPIO@osceola.org

LYNX understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If LYNX will act on behalf of the Funding Partner, as provided under section 119.011(2), Florida Statutes, LYNX, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

(a) Keep and maintain public records required by the Funding Partner to perform the service.

(b) Upon request from the Funding Partner's custodian of public records, provide the Funding Partner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if LYNX does not transfer the records to the Funding Partner.

(d) Subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, upon completion of the contract, transfer, at no cost, to the Funding Partner all public records in possession of the LYNX or keep and maintain public records required by the Funding Partner to perform the service. If LYNX transfers all public records to the Funding Partner upon completion of the contract, LYNX shall, subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LYNX keeps and maintains public records upon completion of the contract, LYNX shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Funding Partner, upon request from the Funding Partner's custodian of public records, in a format that is compatible with the information technology systems of the Funding Partner.

(e) If LYNX does not comply with a public records request, the Funding Partner shall enforce the contract provisions in accordance with the Agreement.

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. **Compliance with FTA/FDOT Requirements**. The provisions of this Agreement, and the Public Transportation to be provided by LYNX hereunder, is subject at all times to the applicable statutes and rules and regulations of all applicable governmental authorities, including those of the FTA and FDOT. In the event any such statutes or rules or regulations would require a substantial and material change to this Agreement, then the parties will immediately meet to review and make acceptable adjustments to this Agreement so as to comply with such statutes and rules and regulations.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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:	Osceola County 1 Courthouse Square, Suite 4700 Kissimmee, Florida 34741 Attn: Don Fisher, County Manager
With copy to:	Osceola County 1 Courthouse Square, Suite 4700 Kissimmee, Florida 34741 Attn: County Attorney
With copy to:	Osceola County 1 Courthouse Square, Suite 4700 Kissimmee, Florida 34741 Attn: Transportation Planning
As to LYNX:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer
With copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Leonard Antmann, Chief Financial Officer
With a copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Carrie L. Sarver, Esq., B.C.S., Senior In-House Counsel

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

20. **Effective Date.** The effective date of this Agreement shall be October 1, 2022. Unless terminated earlier in accordance with Paragraph 7 of this Agreement, this Agreement will terminate on September 30, 2023, except for the provisions of this Agreement which by their terms survive the termination of this Agreement.

21. **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.

22. **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.

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 (NA) 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

ATTEST:

By: ______________________________
Clerk to the Board of County Commissioners

For the use and reliance of Osceola County only. Approved as to form and legal sufficiency.

____
County Attorney

FUNDING PARTNER:

BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA

By: ______________________________
Chair / Vice Chair

Date: ______________________________

SIGNATURE PAGE FOR LYNX

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By: ______________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: ______________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ________________________________
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel

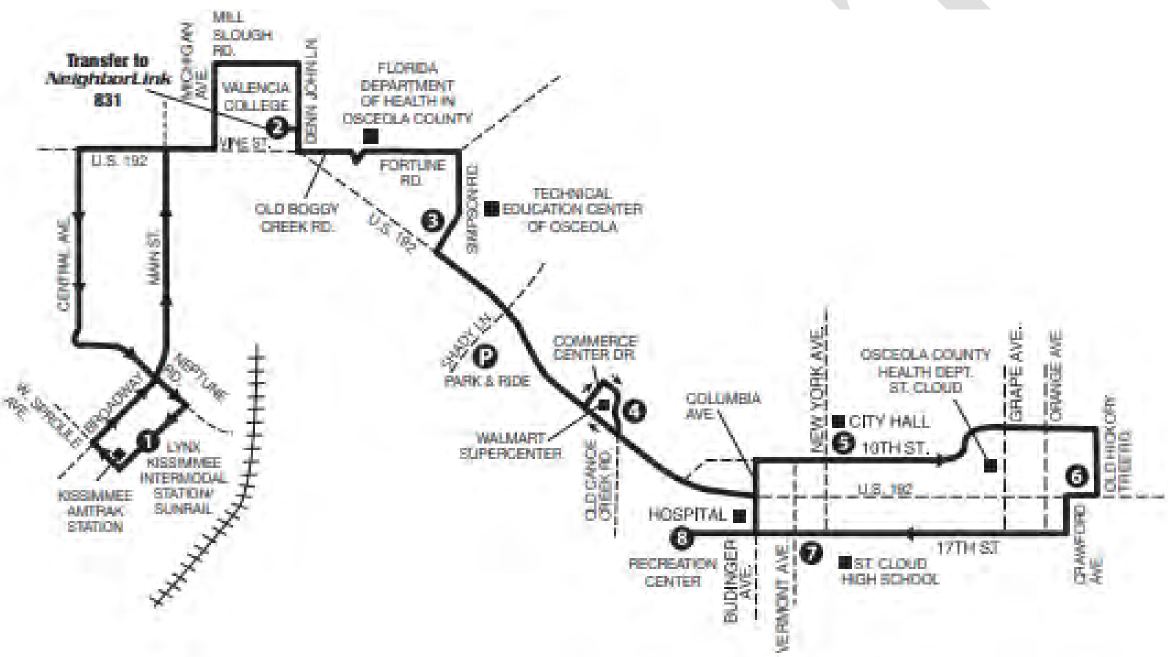
Date:________________________________

Exhibit "A"

DESCRIPTION OF SERVICE AREA

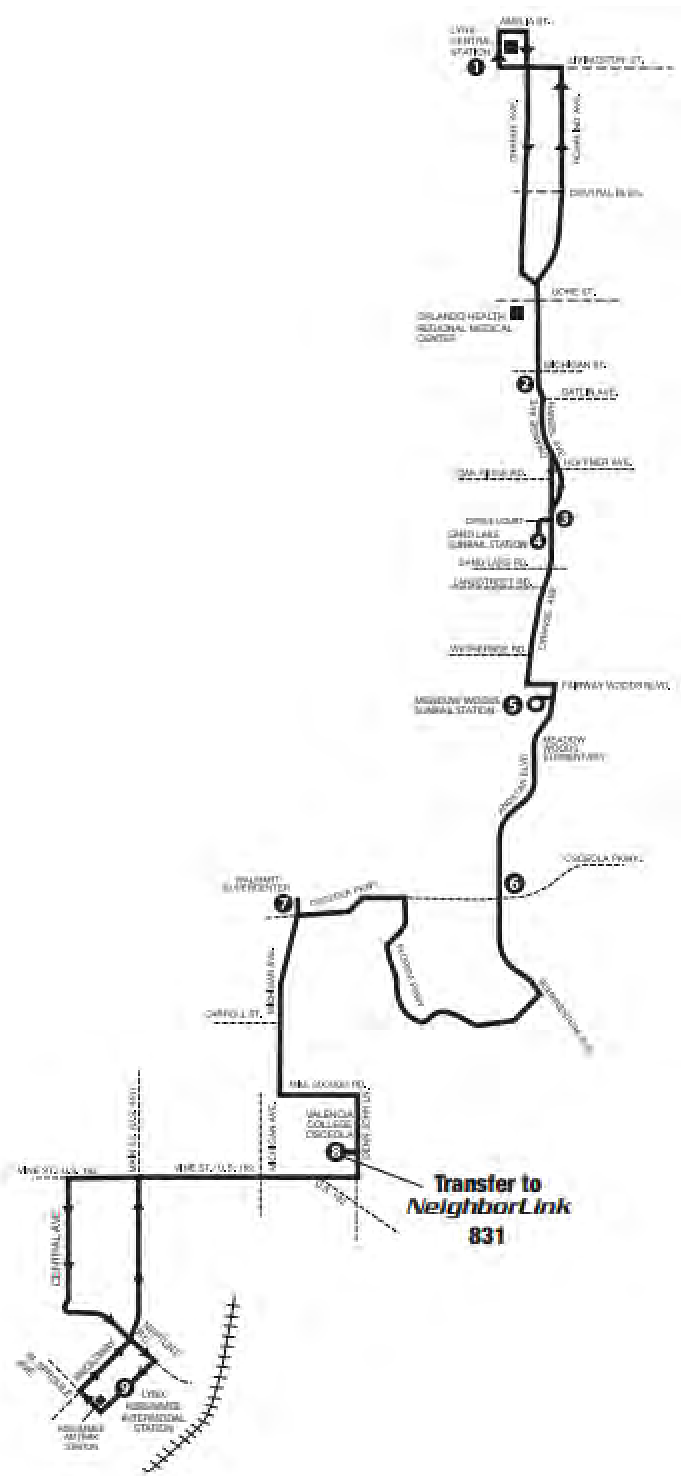
Link 10 East U.S. 192/St. Cloud

Serving: LYNX Kissimmee Intermodal Station, Dept. of Children & Families, Mill Creek, Valencia College- Osceola, Osceola County Health Department- Kissimmee, Center for Women & Family Health, Technical Education Center of Osceola, Osceola Sheriff's Office, St. Cloud Walmart Supercenter, St. Cloud City Hall, Osceola County Health Department- St. Cloud, St. Cloud High School, Orlando Health- St. Cloud, and St. Cloud Recreation Center.



Link 18 South Orange Ave. /Kissimmee

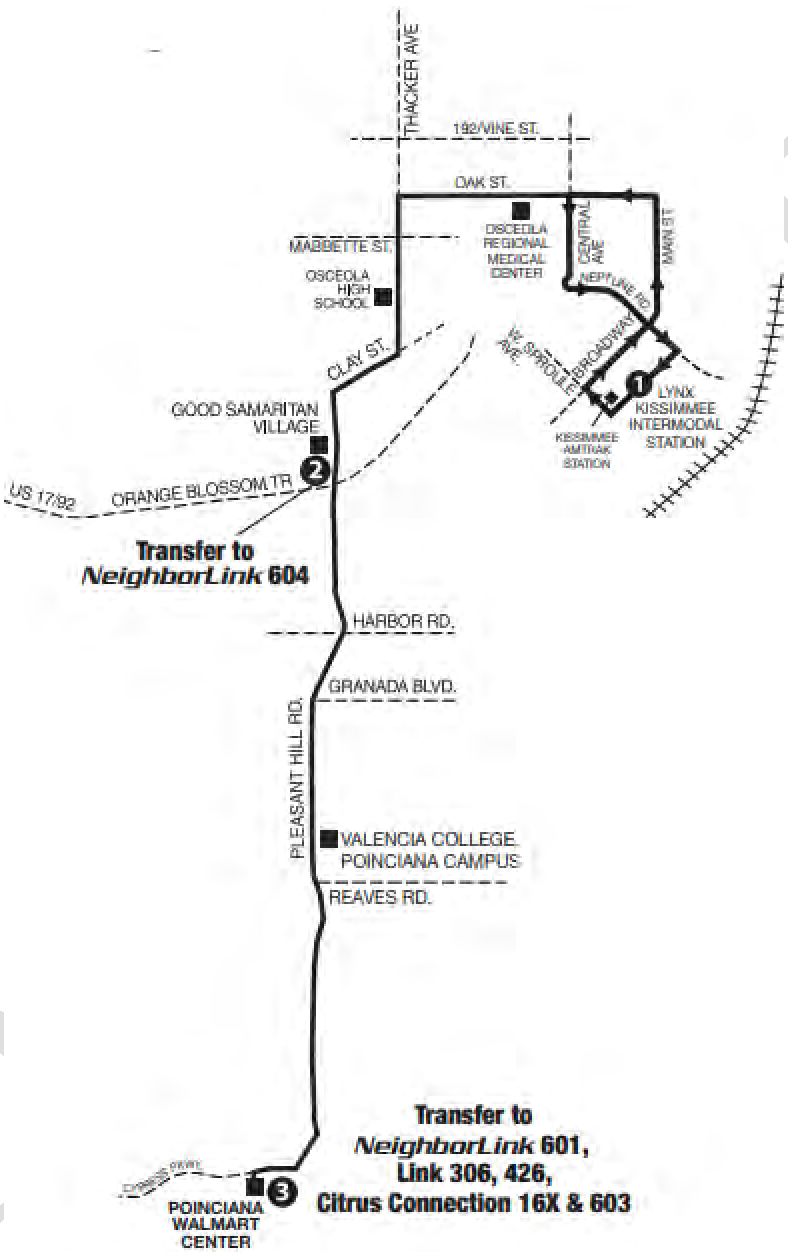
Serving: LYNX Central Station, Orlando Regional Medical Center, Pine Castle, Taft, Meadow Woods SunRail Station, Cypress Creek High School, Valencia College Osceola, Vine Street, LYNX Kissimmee Intermodal Station, and Sand Lake SunRail Station



23-C08

Link 26 Pleasant Hill Road/Poinciana

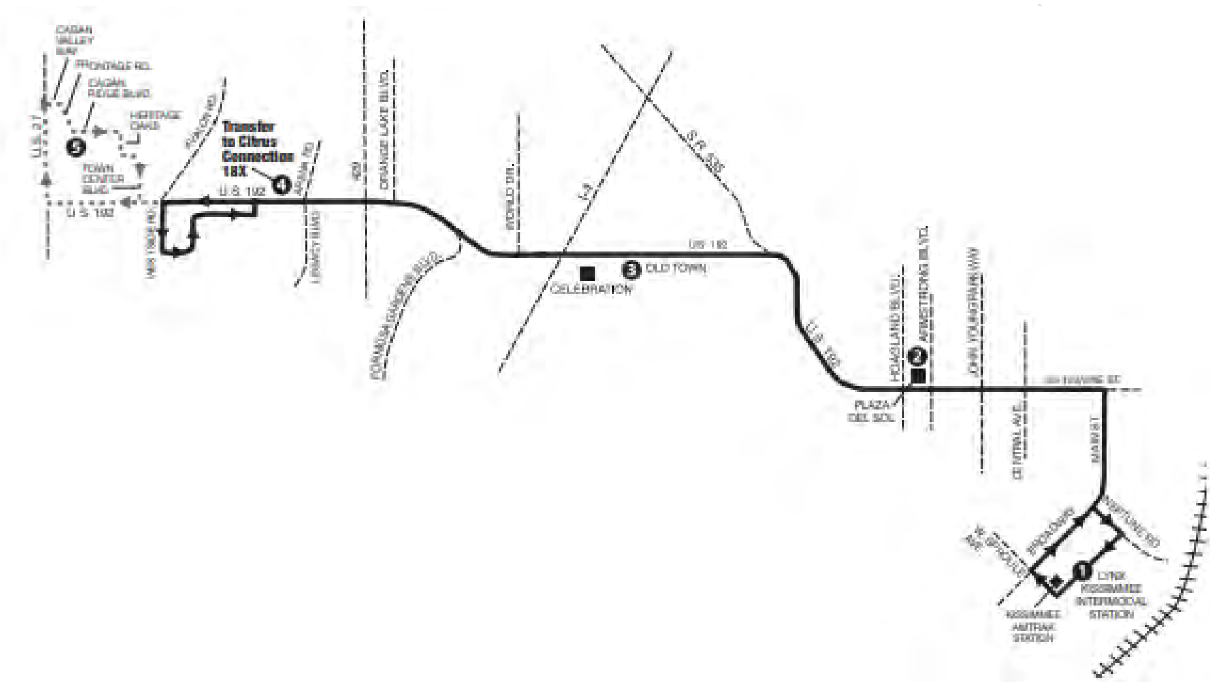
Serving: LYNX Kissimmee Intermodal Station/SunRail, Osceola Regional Medical Center, Thacker Ave., Osceola High School, Good Samaritan Village, Valencia College – Poinciana Campus, and Walmart Poinciana



23-C08

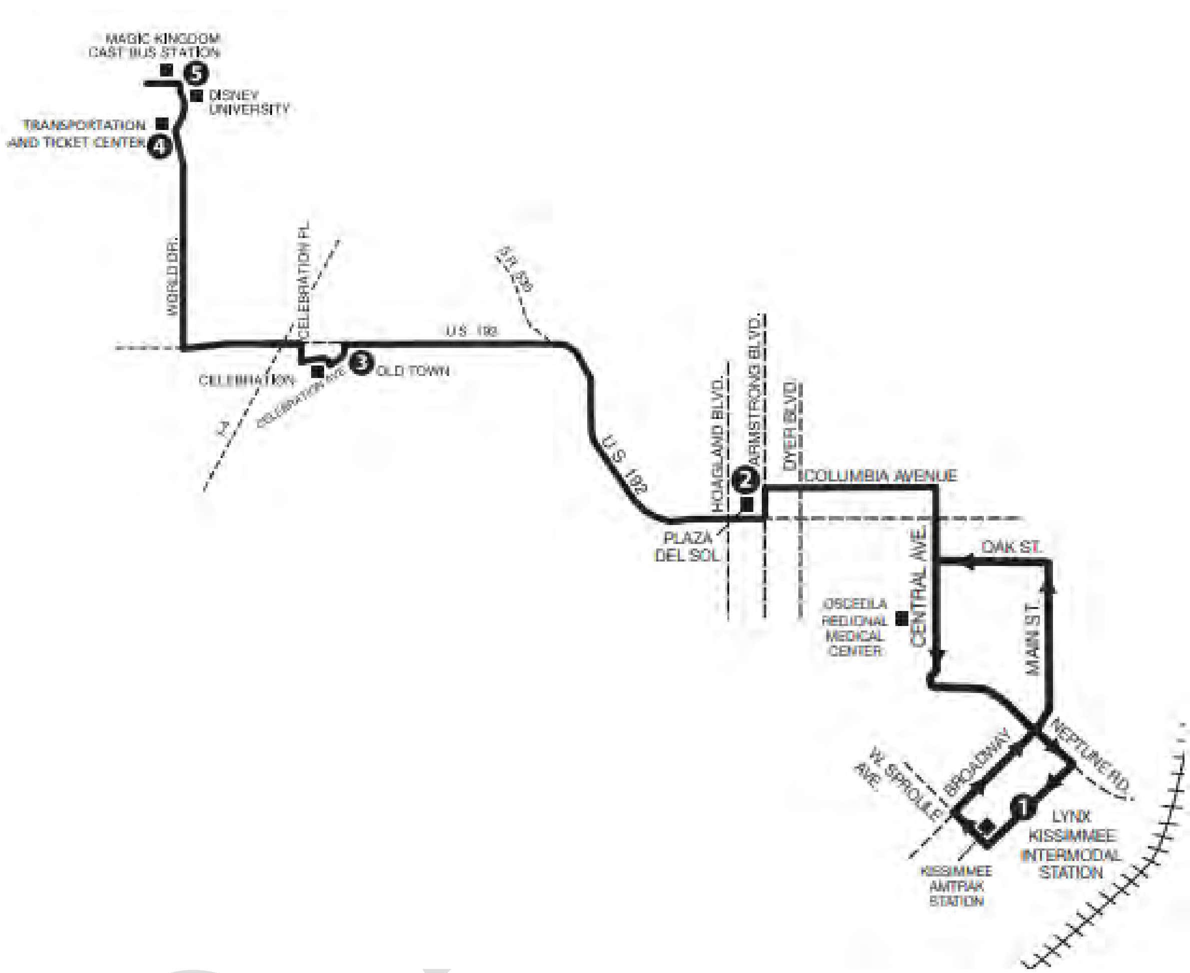
Link 55 West U.S. 192/Four Corners

Serving: LYNX Kissimmee Intermodal Station/SunRail, Old Town, Celebration, Orange Lake, Four Corners Walmart, and Plaza Del Sol.



Link 56 **West U.S. 192/ Magic Kingdom**

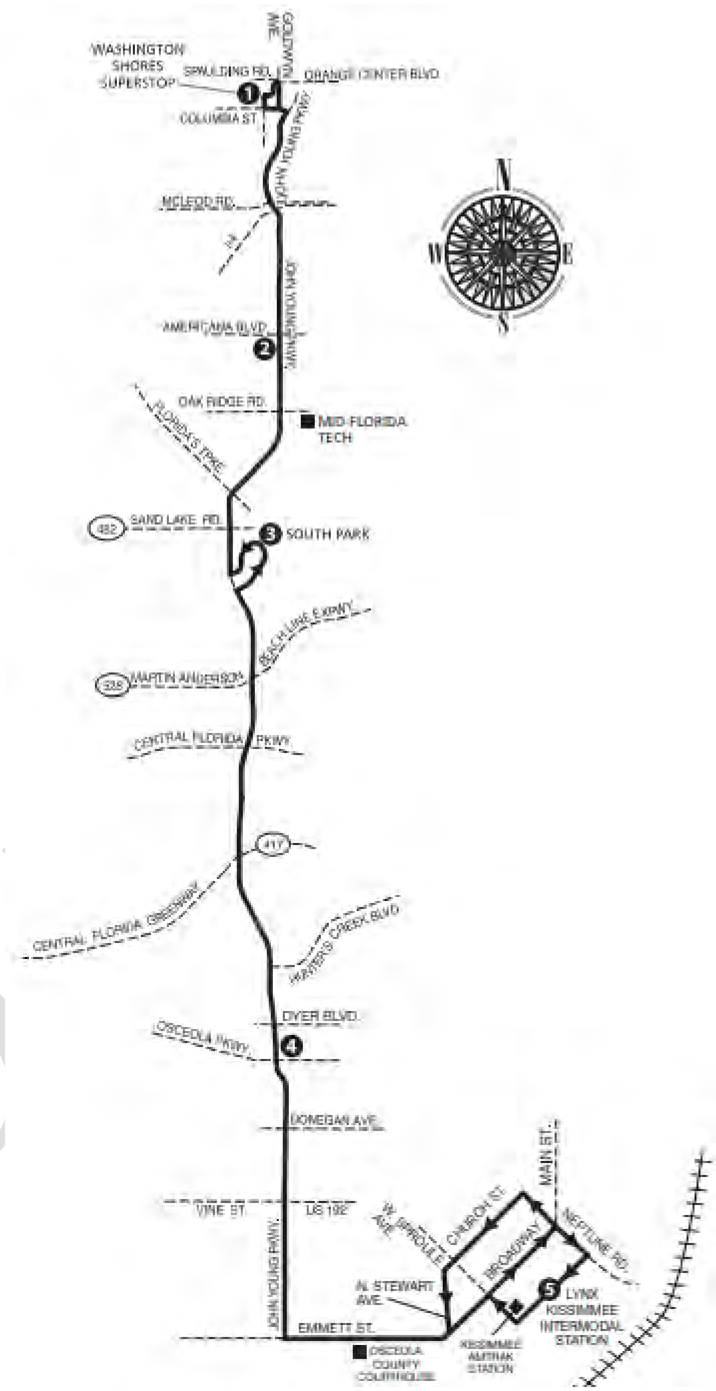
Serving: Plaza Del Sol, Old Town, Celebration, Walt Disney World Resort Transportation & Ticket Center, Magic Kingdom Cast Bus Station, Disney University, LYNX Kissimmee Intermodal Station/SunRail, and Osceola Regional Medical Center



23-C08

Link 57 John Young Parkway

Serving: Washington Shores SuperStop, Mid Florida Tech, South Park Walmart, Hunter's Creek, LYNX Kissimmee Intermodal Station/SunRail, Osceola County Courthouse, and The Loop



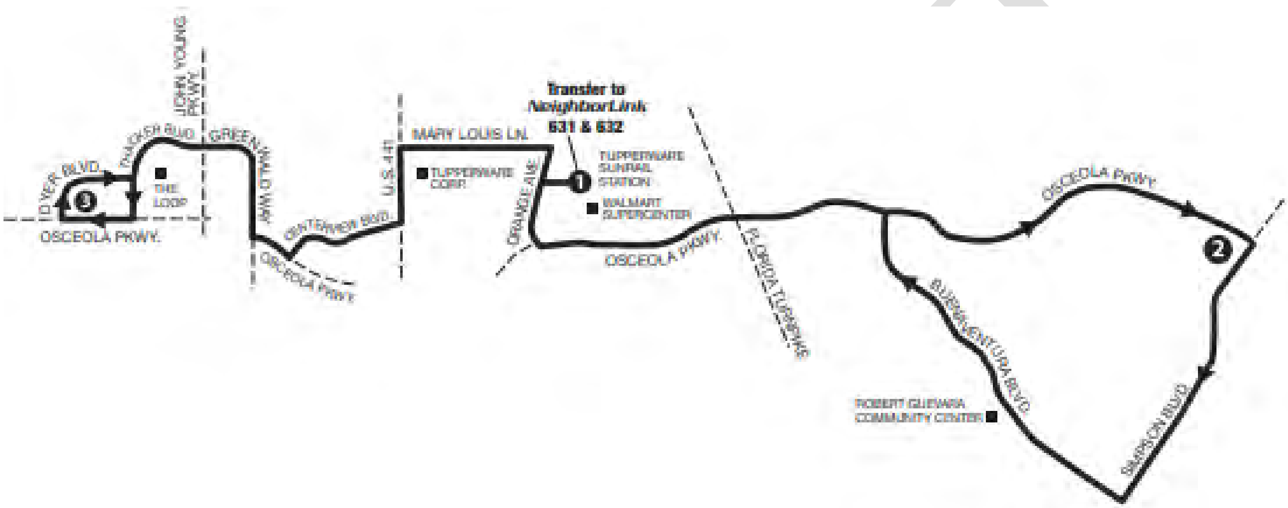
23-C08

Link 108 **South U.S. 441 (Orange Blossom Trail)/Kissimmee**

Serving: Florida Mall Superstop, Gatorland Zoo, AdventHealth- Kissimmee, and LYNX Kissimmee Intermodal Station/SunRail.

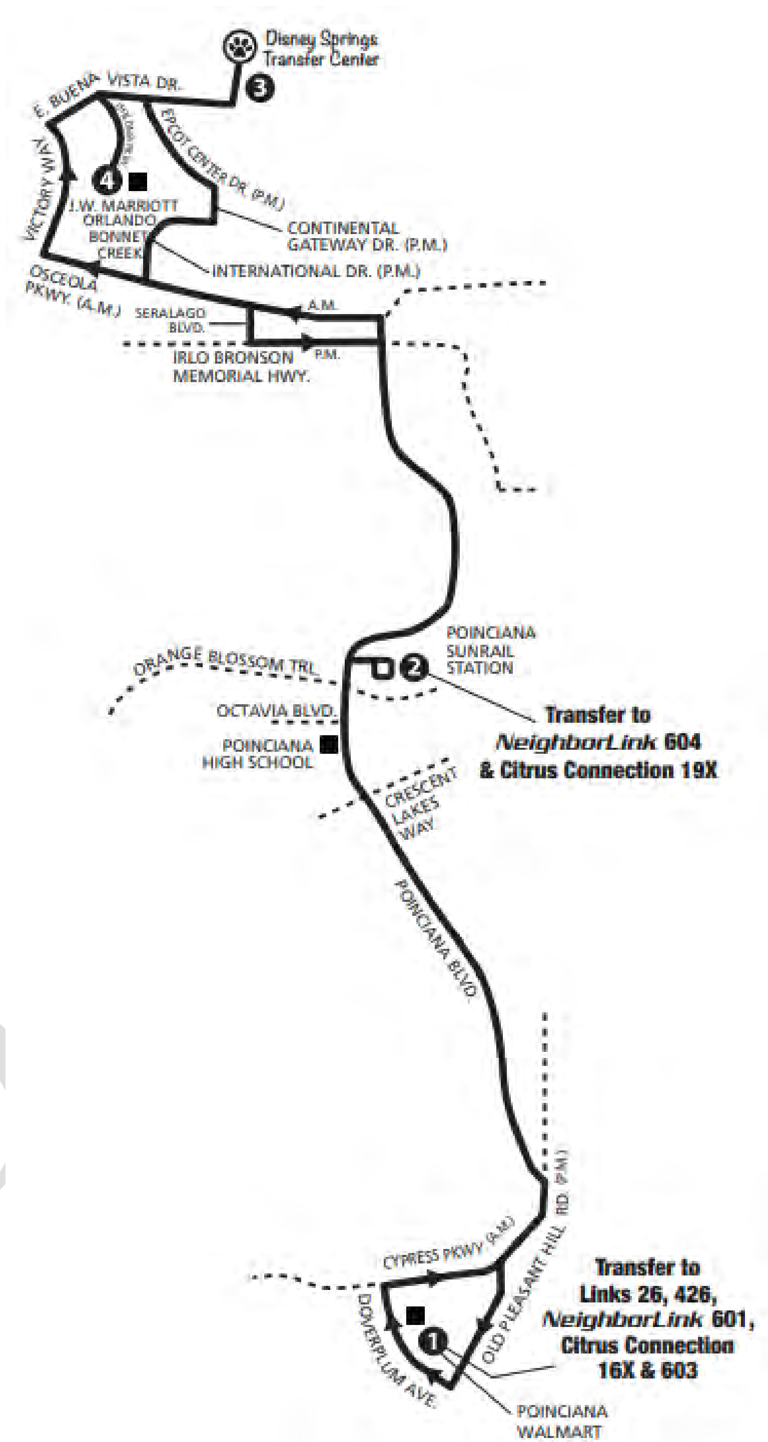
Link 155 The Loop/Buena Ventura Lakes/Osceola Parkway

Serving: The Loop, Tupperware Headquarters, Tupperware SunRail Station, Walmart Supercenter, Robert Guevara Community Center, and Buena Ventura Lakes.



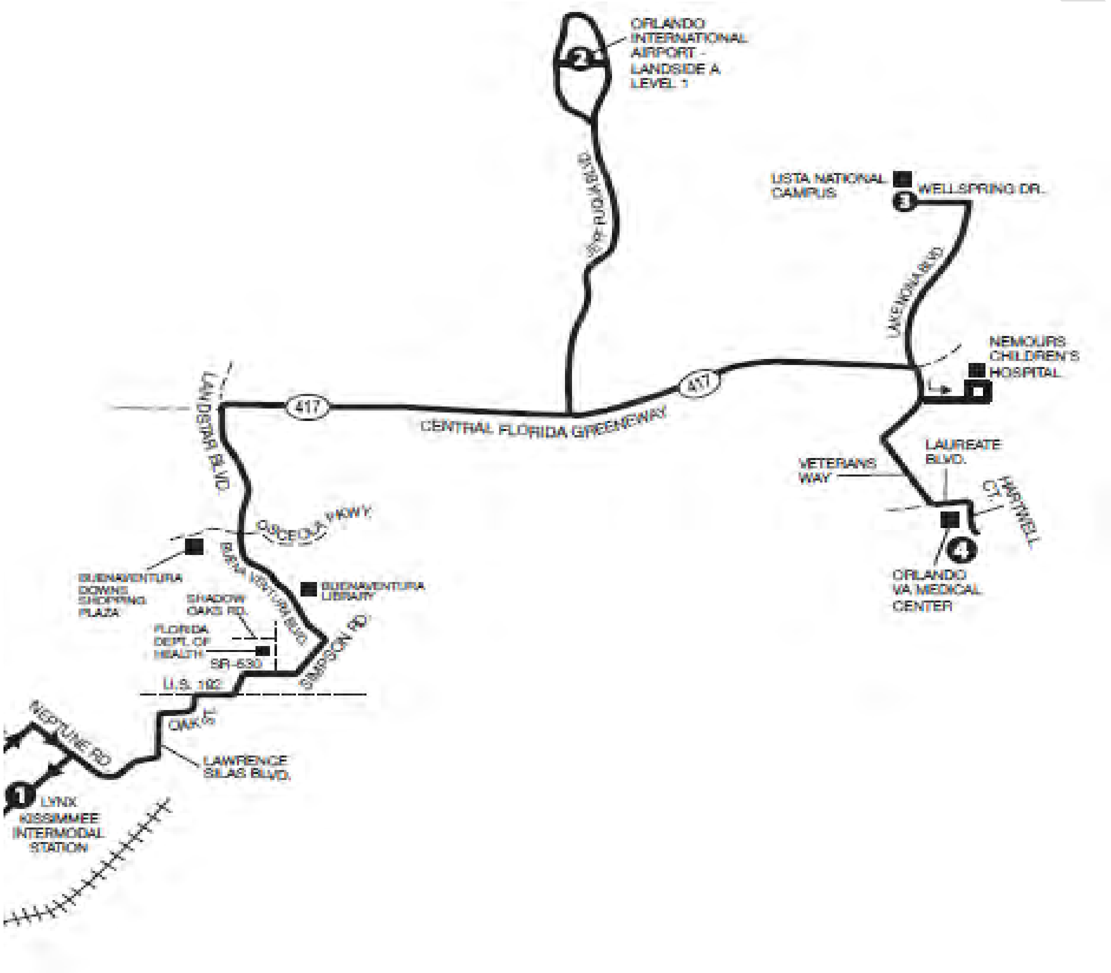
Link 306 Disney Direct/Poinciana

Serving: Disney Springs Transfer Center, J.W. Marriott Orlando Bonnet Creek, Poinciana SunRail Station, Poinciana High School, and Poinciana Walmart.



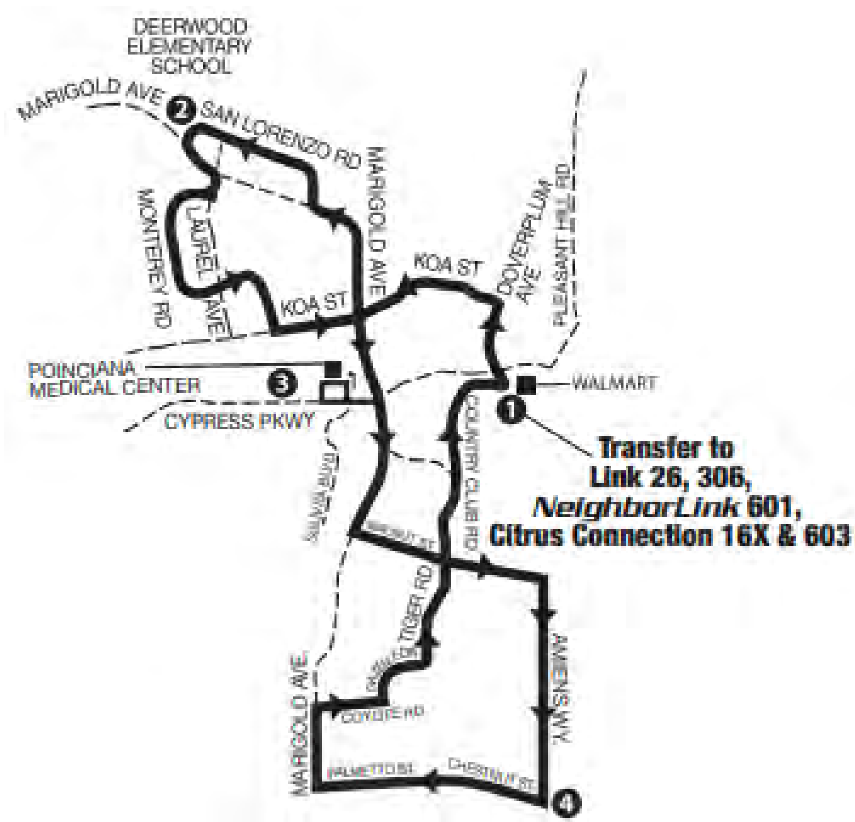
FastLink 407 **Kissimmee/ Orlando International Airport/Medical City**

Serving: Kissimmee Intermodal Station, Florida Dept. of Health, BuenaVentura Library, Orlando International Airport, USTA National Campus, Nemours Children's Hospital, and Orlando VA Medical Center.



426 Poinciana Circulator

Serving: Poinciana Community Center, Poinciana Medical Center, Deerwood Elementary School, and Poinciana Walmart.



FastLink 441 South U.S. 441 (Orange Blossom Trail) FastLink

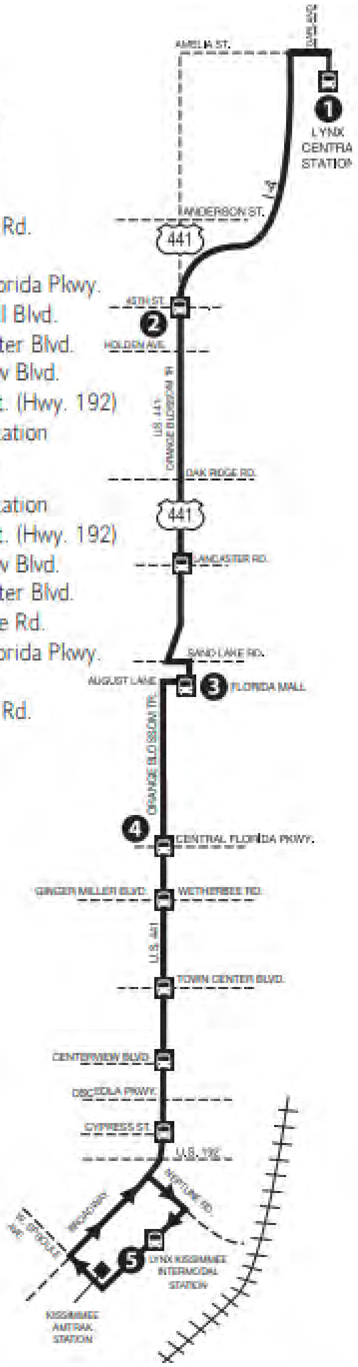
Serving: LYNX Central Station, Florida Mall, and Kissimmee Intermodal Station/SunRail.

FASTLINK 441 OUTBOUND STOPS

- LYNX Central Station
- Orange Blossom Tr./45th St.
- Orange Blossom Tr./Lancaster Rd.
- Florida Mall SuperStop
- Orange Blossom Tr./Central Florida Pkwy.
- Orange Blossom Tr./Ginger Mill Blvd.
- Orange Blossom Tr./Town Center Blvd.
- Orange Blossom Tr./Centerview Blvd.
- Orange Blossom Tr./Cypress St. (Hwy. 192)
- LYNX Kissimmee Intermodal Station

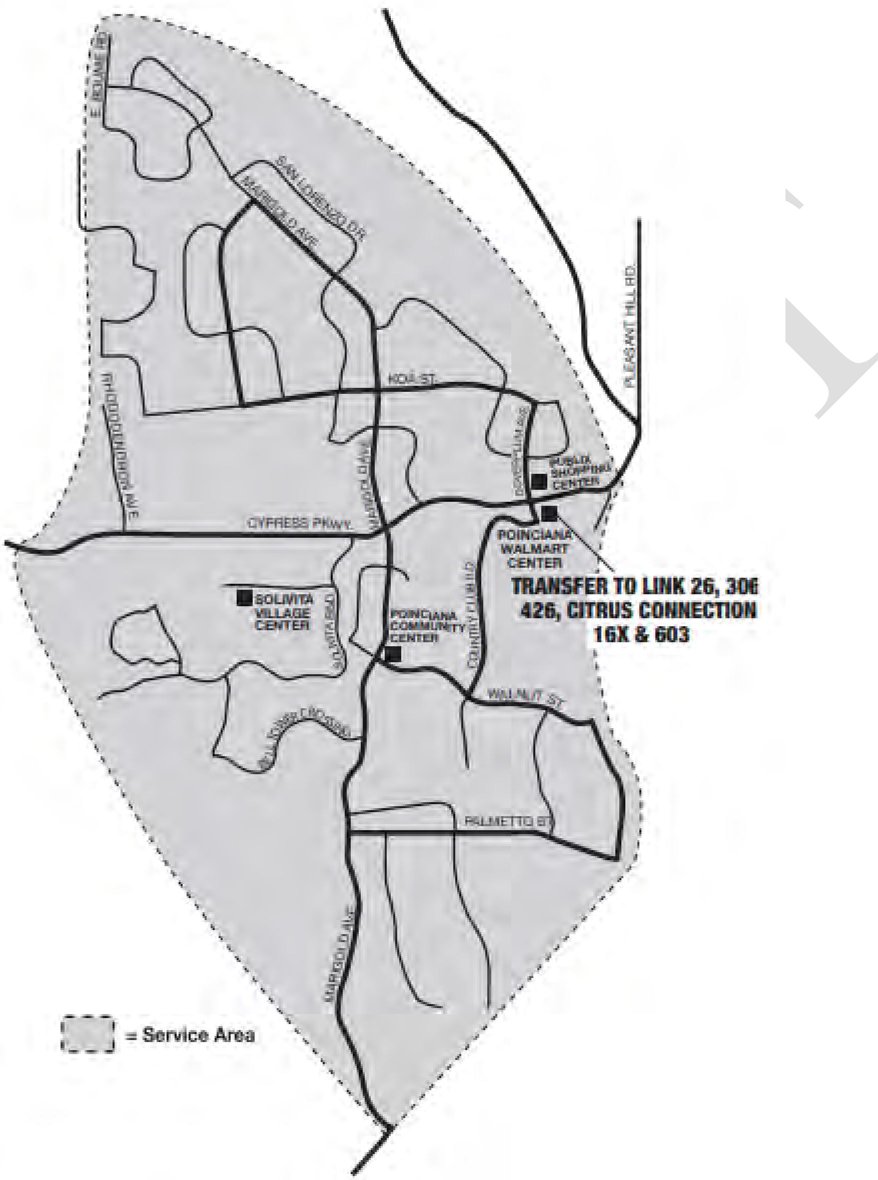
FASTLINK 441 INBOUND STOPS

- LYNX Kissimmee Intermodal Station
- Orange Blossom Tr./Cypress St. (Hwy. 192)
- Orange Blossom Tr./Centerview Blvd.
- Orange Blossom Tr./Town Center Blvd.
- Orange Blossom Tr./Wetherbee Rd.
- Orange Blossom Tr./Central Florida Pkwy.
- Florida Mall SuperStop
- Orange Blossom Tr./Lancaster Rd.
- Orange Blossom Tr./45th St.
- LYNX Central Station



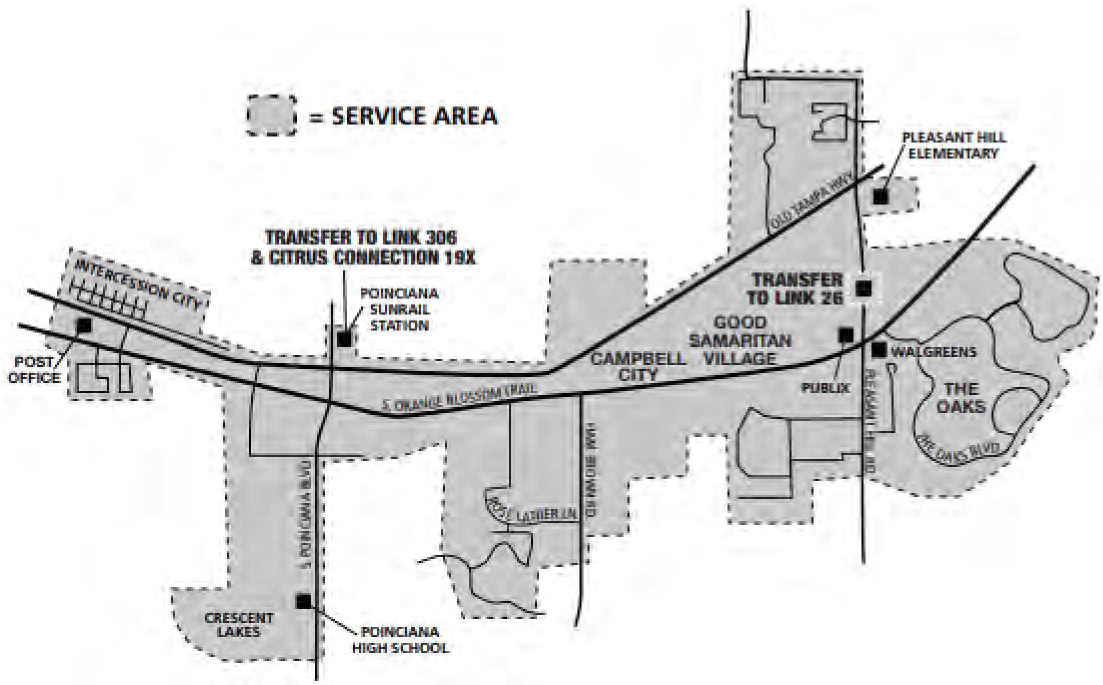
NeighborLink 601 Poinciana

Serving: Poinciana, Poinciana Walmart, Solivita Village Center, and Poinciana Medical Center.



NeighborLink 604 Intercession City/Campbell City

Serving: Intercession City, Campbell City, Southwest Kissimmee, Link 26, Poinciana SunRail Station, Pleasant Hill Commons, Publix Shopping Center, Good Samaritan Village, The Oaks and Crescent Lakes.



NeighborLink 831 N. Kissimmee/Buena Ventura Lakes

Serving: Osceola County Correctional Facility, Technical Education Center Osceola, Valencia College Osceola Campus, The Loop, Tupperware HQ, Walmart Supercenter, AdventHealth Kissimmee, and Tupperware SunRail Station.

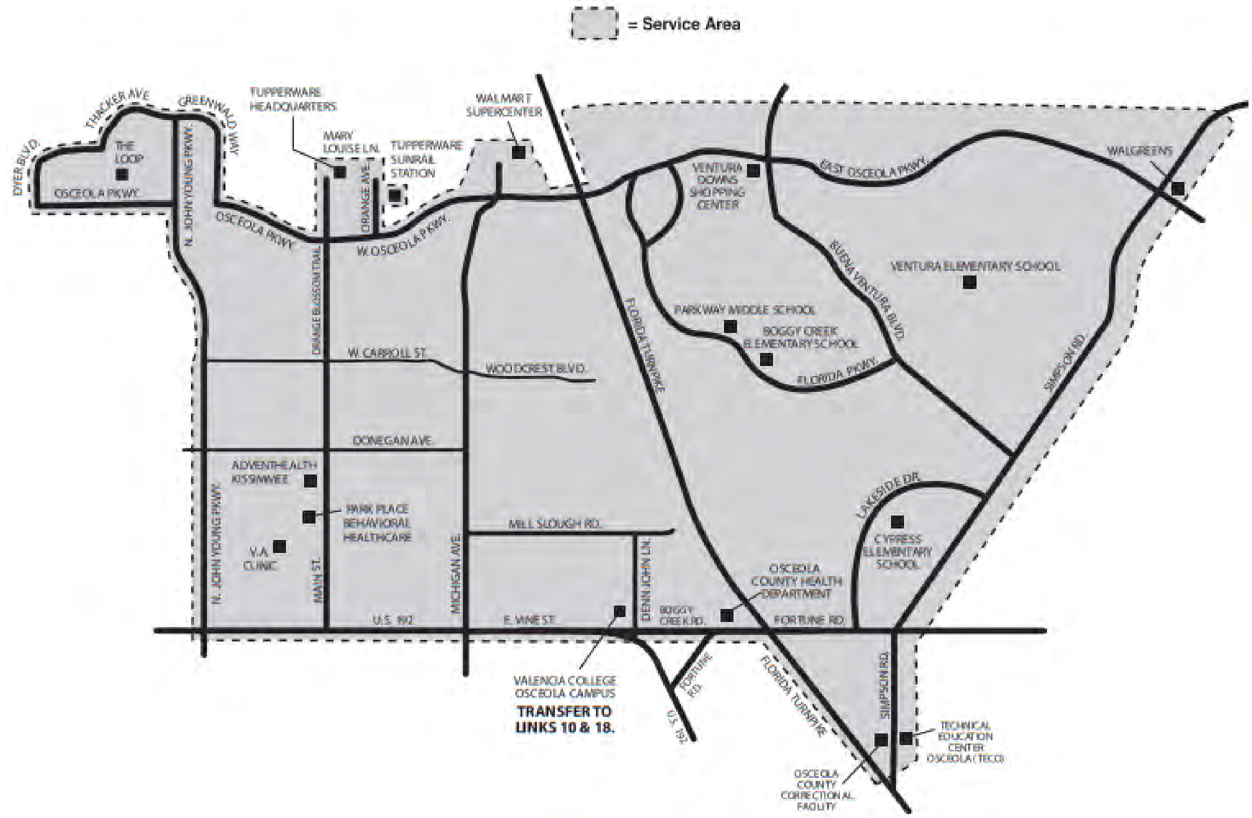


Exhibit “B”

Description of Appropriated Amount
October 1, 2022 through September 30, 2023

Fixed Route Operating Costs

Link Services	Amount
Link 10	$2,200,813
Link 18	$769,421
Link 26	$1,615,115
Link 55	$2,442,658
Link 56	$2,178,665
Link 57	$287,264
Link 108	$612,013
Link 155	$489,091
Link 306	$108,383
Link 407	$139,802
Link 426	$561,569
Link 441	$119,214
	$11,524,008

Operating Cost Recoveries	Amount
Estimated Farebox Recovery	($1,703,966)
SunRail Feeder Service	($468,394)
Lynx Non-Operating Cost Recoveries	($101,384)
LYNX Stabilzation Fund	($3,082,575)
	($5,356,319)

Net Fixed Route Cost **$6,167,689**

NeighborLink Operating Costs	Amount
NL 601	$188,942
NL 604	$122,100
NL 831 (formerly NL631 & NL 632)	$355,723
	$666,765

ParaTransit Operating Costs	Amount
Americans with Disabilities Actu (ADA) Funding	$2,548,462
Transportation Disadvantaged (TD) Funding	$1,766,522
LYNX Stabilzation Fund	($685,192)
	$3,629,792

Total Operating Costs	**$10,464,246**

Capital Funding Cost	Amount
$3 per Hour Capital Funding	$417,228
	$417,228

Total County Transit Service Cost	**$10,881,474**

FY2023 Billing Schedule

October-22	$906,789
November-22	$906,789
December-22	$906,789
January-23	$906,789
February-23	$906,789
March-23	$906,789
April-23	$906,789
May-23	$906,789
June-23	$906,789
July-23	$906,789
August-23	$906,789
September-23	$906,795
Annual Funding Request from County	**$10,881,474**

Exhibit "C"
Schedule Listing of LYNX Funding Partners

		FY2023 Funding Agreement
Operating Funding		
Orange County	$	59,280,043
Osceola County		10,464,246
Seminole County		10,248,484
Subtotal	$	79,992,773
City of Orlando	$	4,003,006
City of Orlando - LYMMO		2,861,057
FDOT (SunRail Feeder Route)		1,713,747
Reedy Creek		441,445
Altamonte Springs		120,900
City of Sanford		93,000
Subtotal	$	9,233,155
Subtotal Operating Funding	$	89,225,928
Capital Contributions		
Orange County	$	2,833,556
Osceola County		417,228
Seminole County		376,712
Subtotal	$	3,627,496
Total Local Funds	$	92,853,424

23-C09 Service Funding Agreement
by and between
Seminole County, Florida
and
Central Florida Regional Transportation Authority

THIS SERVICE FUNDING AGREEMENT ("Agreement") is made and entered into by and between **SEMINOLE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, whose principal address is 1101 East First Street, Sanford, Florida 32771 (hereinafter the "**Funding Partner**"), and the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate created pursuant to Part III, 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 an Interlocal Agreement for Public Transit Services dated as of November 9, 2021 (the "**Prior Fiscal Year Funding Agreement**") pursuant to which the Funding Partner agreed to appropriate funds to LYNX for fiscal year from October 1, 2021 to September 30, Link 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, 2022; and

WHEREAS, the Funding Partner has budgeted funds for the fiscal year beginning on October 1, 2022 and ending on September 30, 2023 ("**Fiscal Year**") to support LYNX's Public Transportation services for such fiscal year; and

WHEREAS, LYNX and the Funding Partner wish to acknowledge that appropriate methodology has been used to determine the recommended level of funding by each Funding Partner; 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 only within the Service Area (as hereinafter defined).

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 meetings:

"**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 and Addenda.

"**Appropriated Amount**" means the amount to be paid to LYNX by the Funding Partner for the Current Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder, as set forth in Paragraph 3 hereof.

"**Current Fiscal Year**" shall mean the fiscal year beginning on October 1, 2021 and ending on September 30, 2022.

"**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).

"Demand Response Service" or "NeighborLink" means service provided in response to passenger requests made in advance to LYNX, which then dispatches a vehicle to pick up the

passengers and transport them to their destinations or to a fixed-route transfer point within a designated demand response service area.

"**Fiscal Year**" or "**Current Fiscal Year**" means the twelve (12) month period commencing October 1, 2022 and ending the following September 30, 2023.

"**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.

"**FDOT**" means the Florida Department of Transportation.

"**FTA**" means the Federal Transit Association.

"**New Appropriated Amount**" means the amount that is approved or appropriated by the Funding Partner for the Next Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder for the Next Fiscal Year, as set forth in Paragraph 3 below.

"**Next Fiscal Year**" means the twelve (12) month period immediately following the Current Fiscal Year, and is the period commencing October 1, 2023 and ending the following September 30, 2024.

"**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 of the Fixed-Route Service, as the case may be, described and set forth in **Exhibit "A"** attached hereto.

3. **Funding Partner Obligations**.

(a) **Current Fiscal Year.**

(i) The Funding Partner agrees to appropriate the amount specified on **Exhibit "B"** attached hereto (the "**Appropriated Amount**") to LYNX for the Fiscal Year for the provision of Public Transportation within the Service Area.

(ii) The Appropriated Amount shall be paid by the Funding Partner to LYNX in twelve (12) equal monthly installments, with each installment being due on the first day of each month. The first installment payment shall be due upon the later of (x) October 1, 2022 or (y) thirty (30) days after the execution date of this Agreement; and any other installment payments which would be due prior to the execution date of this Agreement shall also be paid within thirty (30) days after the execution date of this Agreement.

(iii) In the event that the Appropriated Amount is less than the amount suggested by the Funding Model to fully fund the agreed upon service level in the Funding Partner's Service Area, or in the event that the Appropriated Amount is less than the actual cost to fully fund the agreed upon service level in the Funding Partner's Service Area, LYNX may, at its discretion, (x) utilize reserves to fund the difference and continue to provide the requested service level, or (y) reduce the service level in the Funding Partner's Service Area to a level equivalent to the Appropriated Amount. However, in the event clause (x) is applicable, then the Funding Partner will promptly pay said difference to LYNX within thirty (30) days after the execution date of this Agreement.

(iv) In regard to Paragraph 3(a)(ii), above, for each monthly installment, LYNX will invoice the Funding Partner on a monthly basis and said amount shall be paid within thirty (30) days after the receipt by the Funding Partner of said invoice. However, in regard to any monthly installments that remain unpaid prior to the execution of this Agreement, those unpaid monthly installments (for which LYNX will furnish the Funding Partner invoices) will be paid within thirty (30) days after the execution date of the Agreement.

(b) **Next Fiscal Year.** If, prior to the termination date of this Agreement (as set forth in Paragraph 20 below), the Funding Partner and LYNX have not reached a written agreement setting forth an appropriation to LYNX for the Next Fiscal Year, then, notwithstanding the expiration of this Agreement at the end of the Current Fiscal Year and in order to continue the Public Transportation after said expiration, the Funding Partner shall continue to pay LYNX for the Next Fiscal Year the amount set forth below:

(i) The amount to be paid shall be the Appropriated Amount for the Current Fiscal Year. This Appropriated Amount for the Current Fiscal Year (the "**Post-Termination Payment**") shall be paid as provided herein.

(ii) LYNX will prepare and submit invoices for the Post Termination Payments and the Funding Partner will make such Post-Termination Payments within thirty (30) days after its receipt of such invoices from LYNX.

(iii) The Post Termination Payment shall be paid in equal monthly installments due on the first day of each month commencing October 1, 2023.

(iv) until the earliest to occur of the following: (x) LYNX and the Funding Partner reach a written agreement setting forth a different appropriation for the Next Fiscal Year; (y) one hundred twenty (120) days following the 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 receives from LYNX the Public Transportation services provided herein; or (z) the date that LYNX actually discontinues the Public Transportation services to the Funding Partner, at which time this Agreement and specifically the provisions of this Subparagraph 3(b) will no longer be applicable. 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. If this Subparagraph 3(b) is applicable, the parties will reconcile the difference between the amount that was paid by the Funding Partner and the amount that has been agreed upon for the Next Fiscal Year in the first month following the earliest of the occurrences set forth above.

(v) If a written agreement for the Next Fiscal Year is not entered into between LYNX and the Funding Partner by November 30 of the Next Fiscal Year, then, in that event, LYNX will undertake the necessary procedure for the discontinuation of the service which process takes approximately one hundred and twenty (120) days. If a new Funding Agreement for the Next Fiscal Year is not entered into by January 31 of the Next Fiscal Year, then LYNX may discontinue the service in accordance with its policies and the Funding Partner will in any event pay for any service provided for the Next Fiscal Year, including any service that may be provided of necessity by LYNX after January 31 in accordance with its procedures.

(c) 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 two percent (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.

To the extent that there is any increase or decrease of Fixed-Route Service hours greater than two percent (2%) (which would require approval of the Funding Partner), then, in that case, there will be a corresponding increase or decrease in the Appropriated Amount to be paid to LYNX by the Funding Partner from and after said increase or decrease is put into effect.

(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 Office of Regional Mobility 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, Demand Response 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 are plus or minus 10% and 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. The following criteria will be utilized to determine this amount:

(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) Funding Model Information. Attached hereto as **<u>Exhibit "C"</u>** is a schedule listing including the following:

(A) All of LYNX's funding partners;

(B) The amount of funding required of each funding partner by the Funding Model for the Current Fiscal Year; and

(C) The amount each funding partner actually budgeted for the Current Fiscal Year to contribute for the services contemplated in the LYNX Funding Model.

(D) LYNX shall provide quarterly updates to **<u>Exhibit "C"</u>** by listing the amount each funding partner has paid to LYNX to date.

(viii) The amount of fund balance allocated to reserves.

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

(c) **<u>Additional Reporting</u>**. 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. **<u>Independent Contractor</u>**. 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. **<u>Amendments</u>.** 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. **<u>Termination of Agreement</u>.**

> (a) **<u>For Cause</u>**. If LYNX or the Funding Partner (the "**<u>Breaching Party</u>**") fails to fulfill any material covenant, term or condition of this Agreement, the other party (the "**<u>Non-Breaching Party</u>**") 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. In the event the Funding Partner is the Breaching Party, the Funding Partner will nonetheless continue to pay to LYNX for any fixed route service furnished by LYNX up to the actual date that LYNX terminates said fixed route service, taking into account the policies and procedures to be followed by LYNX to terminate bus service generally (but not to exceed one hundred twenty (120) days).

> (b) **<u>For Convenience</u>**. 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 one hundred twenty (120) days receipt of written notice of termination from the party desiring to terminate this Agreement or such later date as specified in the notice.

The provisions of this Paragraph 7 are further subject to the provisions of Subparagraph 3(c) above as to the rights of the parties to terminate this Agreement after the end of any fiscal year as provided in said Paragraph 3(c).

8. **<u>Audit</u>.** 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. <u>Public Records.</u> If LYNX has questions regarding the application of Chapter 119, Florida Statues, to LYNX's duty to provide public records relating to this agreement, contact the funding partner's custodian of public records at**:**

Clerk of Court
1101 E. 1st Street
Sanford, FL 32771
clerk@seminoleclerk.org

LYNX understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If LYNX will act on behalf of the Funding Partner, as provided under section 119.011(2), Florida Statutes, LYNX, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

(a) Keep and maintain public records required by the Funding Partner to perform the service.

(b) Upon request from the Funding Partner's custodian of public records, provide the Funding Partner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if LYNX does not transfer the records to the Funding Partner.

(d) Subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, upon completion of the contract, transfer, at no cost, to the Funding Partner all public records in possession of the LYNX or keep and maintain public records required by the Funding Partner to perform the service. If LYNX transfers all public records to the Funding Partner upon completion of the contract, LYNX shall, subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LYNX keeps and maintains public records upon completion of the contract, LYNX shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Funding Partner, upon request from the Funding Partner's custodian of public records, in a format that is compatible with the information technology systems of the Funding Partner.

(e) If LYNX does not comply with a public records request, the Funding Partner shall enforce the contract provisions in accordance with the Agreement.

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. **Compliance with FTA/FDOT Requirements**. The provisions of this Agreement, and the Public Transportation to be provided by LYNX hereunder, is subject at all times to the applicable statutes and rules and regulations of all applicable governmental authorities, including those of the FTA and FDOT. In the event any such statutes or rules or regulations would require a substantial and material change to this Agreement, then the parties will immediately meet to review and make acceptable adjustments to this Agreement so as to comply with such statutes and rules and regulations.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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:	Seminole County 1101 East First Street Sanford, Florida 32771 Attn: A. Bryant Appelgate, Interim County Manager
With copy to:	Seminole County Services Building 1101 East First Street Sanford, Florida 32771 Attn: Development Services Director
With copy to:	Seminole County Services Building 1101 East First Street Sanford, Florida 32771 Attn: Resource Management Director
As to LYNX:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer
With copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Leonard Antmann, Chief Financial Officer
With a copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Carrie L. Sarver, Esq., B.C.S., Senior In-House Counsel

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

20. **Effective Date.** The effective date of this Agreement shall be October 1, 2022. Unless terminated earlier in accordance with Paragraph 7 of this Agreement, this Agreement will terminate on September 30, 2023, except for the provisions of this Agreement which by their terms survive the termination of this Agreement.

21. **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.

22. **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.

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 (NA) 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

ATTEST:

By: ______________________________
Clerk to the Board of County Commissioners

For the use and reliance of Seminole County only.

FUNDING PARTNER:

BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA

By: ______________________________
Bob Dallari, Chairman

Date: ______________________________

As authorized for execution by the Board of County Commissioners at its _____________, 2022, regular meeting.

Approved as to form and legal sufficiency.

____
County Attorney

SIGNATURE PAGE FOR LYNX

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By: ______________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: ______________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ________________________________
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel

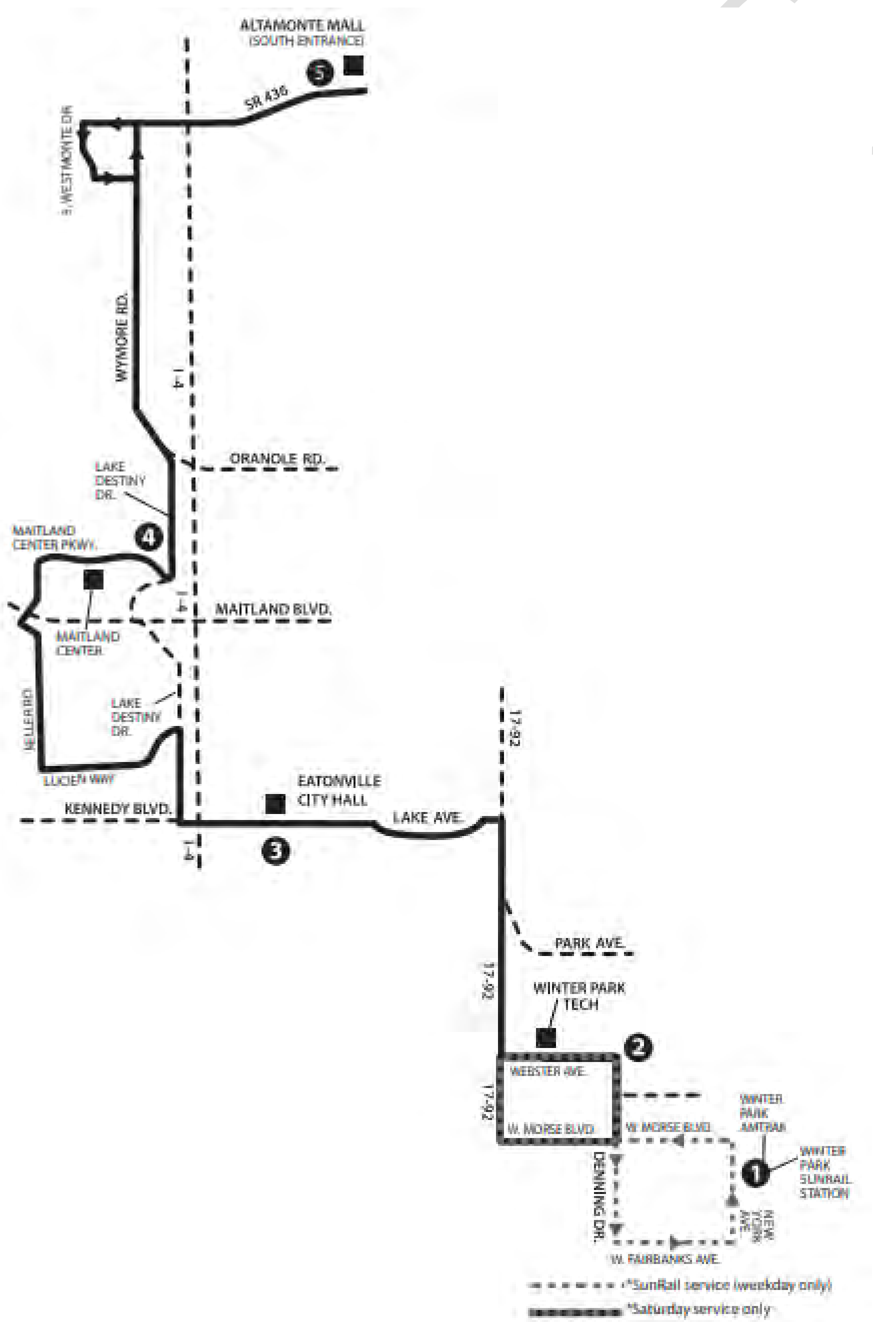
Date:________________________________

Exhibit "A"

DESCRIPTION OF SERVICE AREA

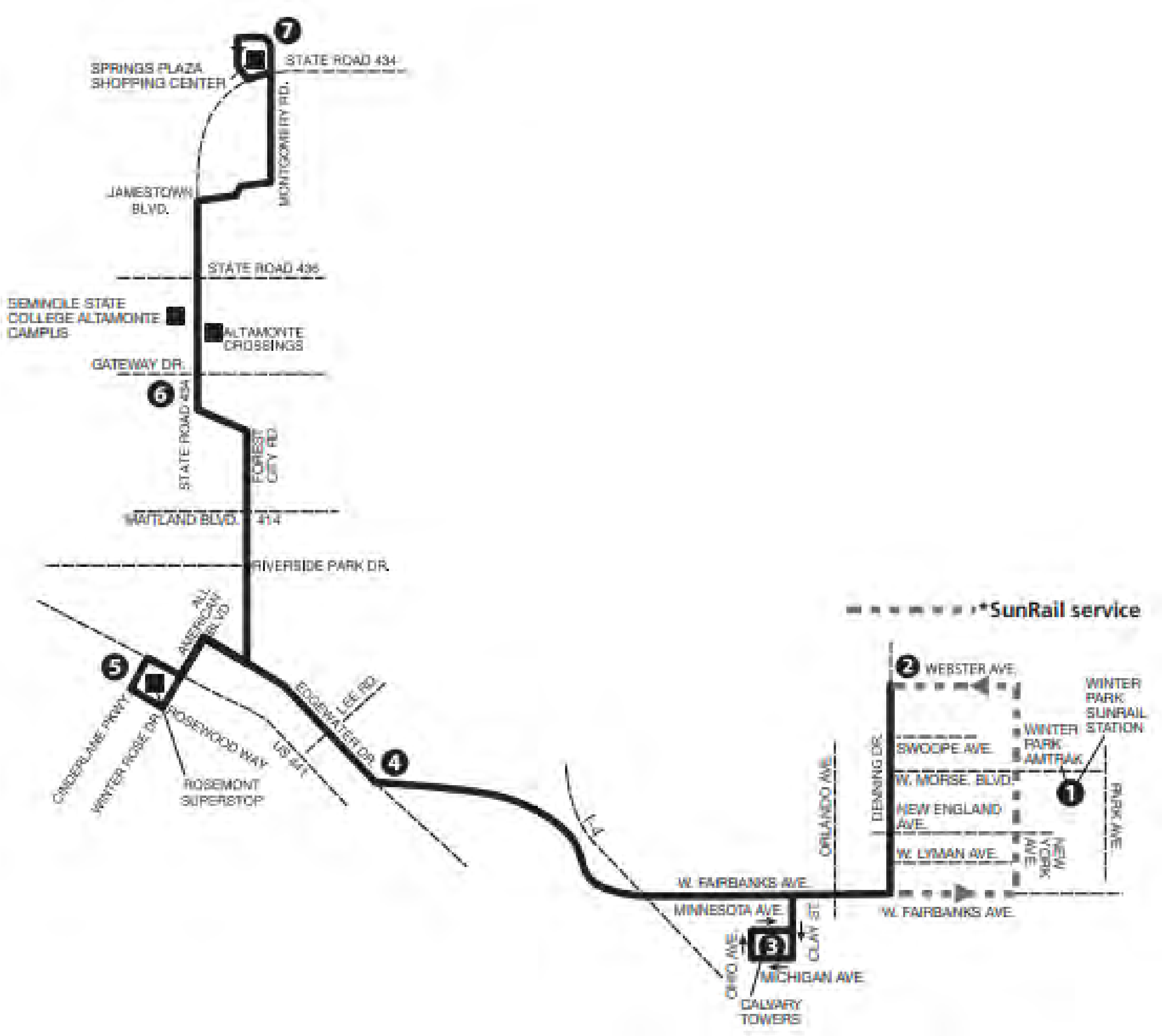
LINK 1 **Winter Park/Maitland/Altamonte Springs**

Serving: Winter Park Tech, Eatonville, Maitland Center, Altamonte Mall, Winter Park SunRail Station and Winter Park Amtrak



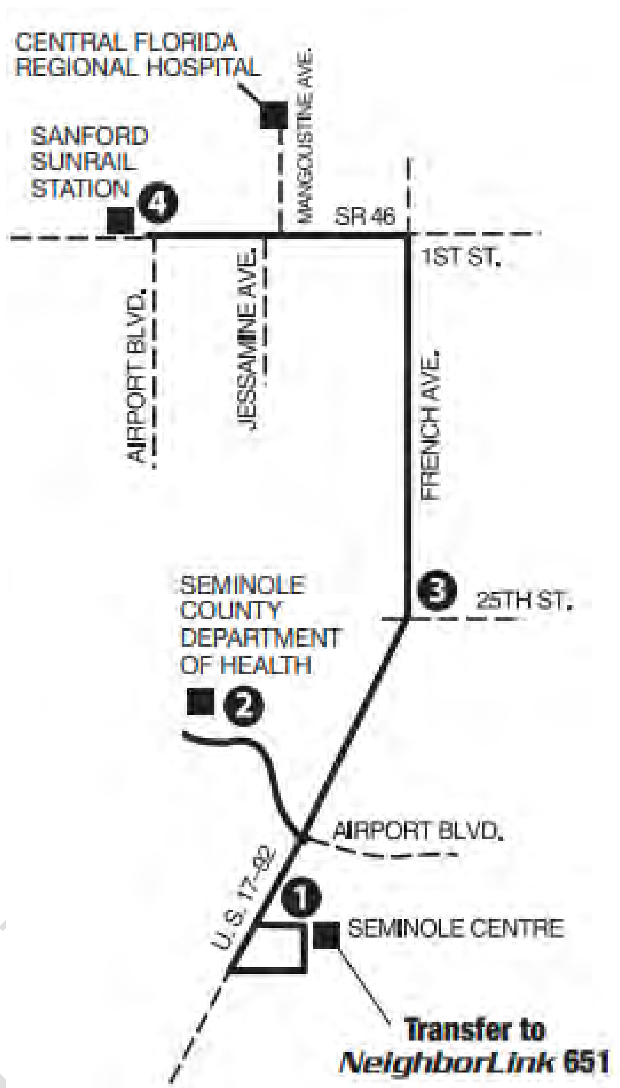
LINK 23 Winter Park/Rosemont/Springs Plaza

Serving: Winter Park Tech, Rosemont Superstop, West Town Center Walmart, Springs Plaza Shopping Center, Winter Park SunRail Station, and Calvary Towers



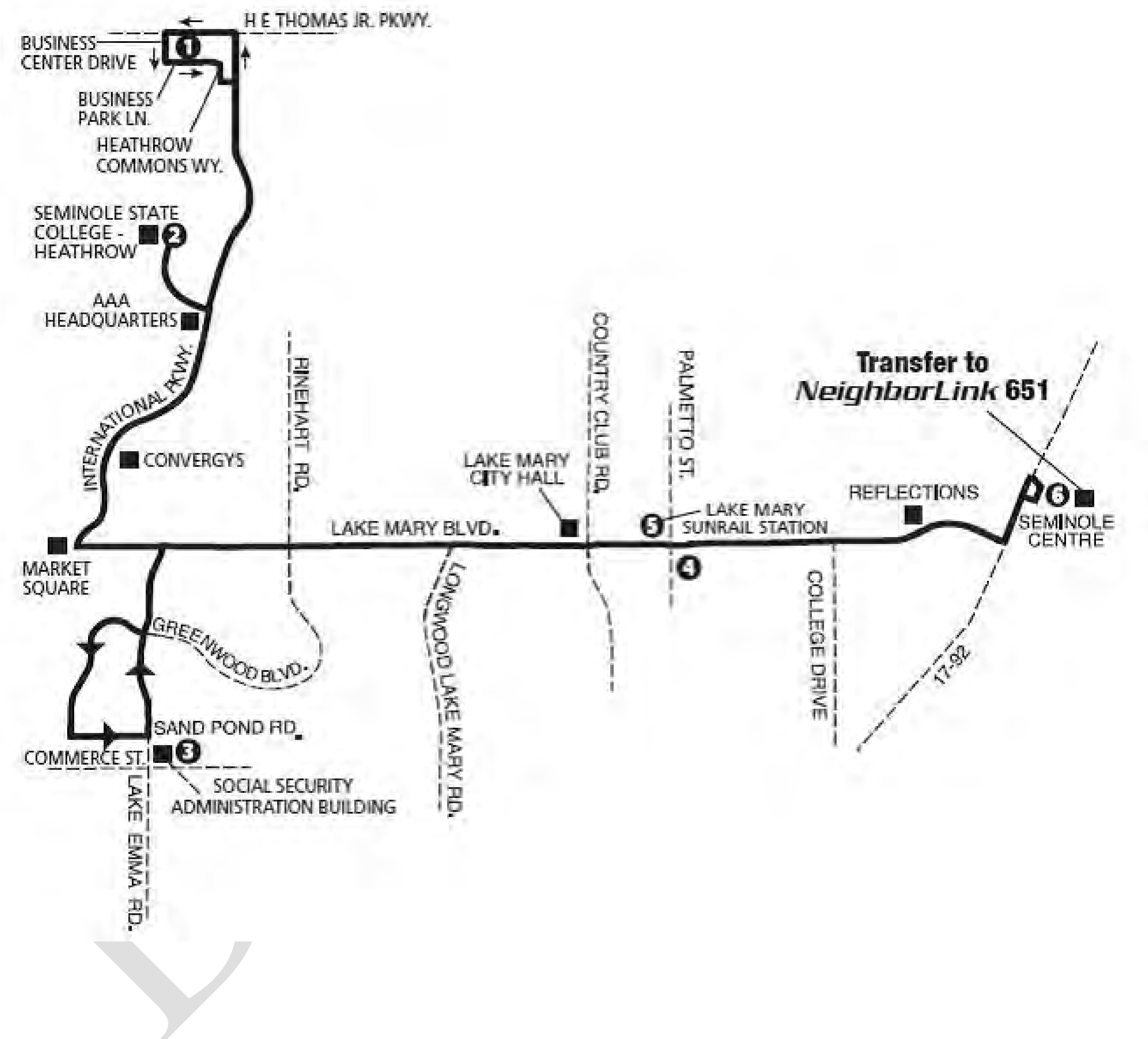
LINK 34 **Sanford/N. U.S. 17-92**

Serving: Seminole Centre, Seminole County Health & Human Services, Central Florida Regional Hospital and Sanford SunRail Station



LINK 45 Lake Mary

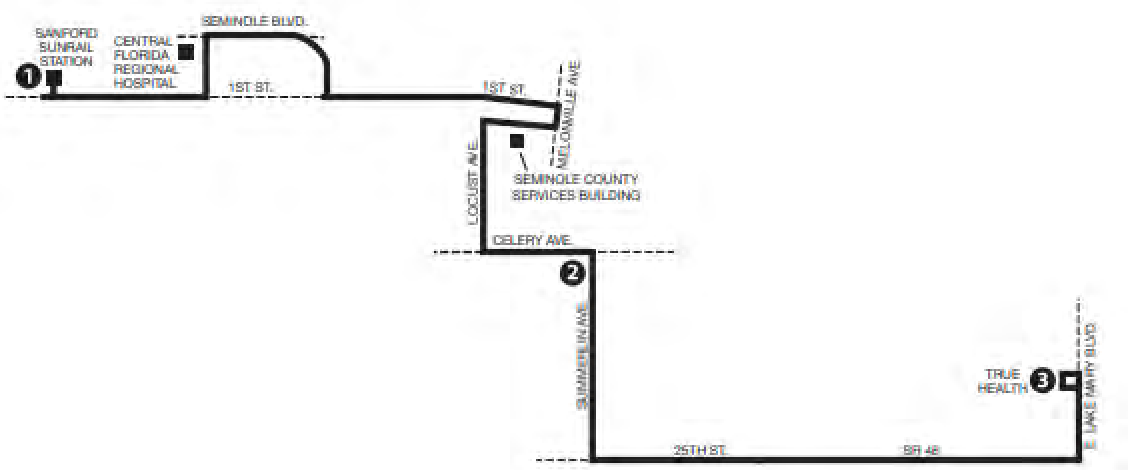
Serving: Colonial Center, Lake Emma Rd, Lake Mary Blvd, Lake Mary City Hall, Reflections, Seminole Centre, Seminole State College - Heathrow, AAA Headquarters, Convergys, and Lake Mary SunRail Station.



23-C09

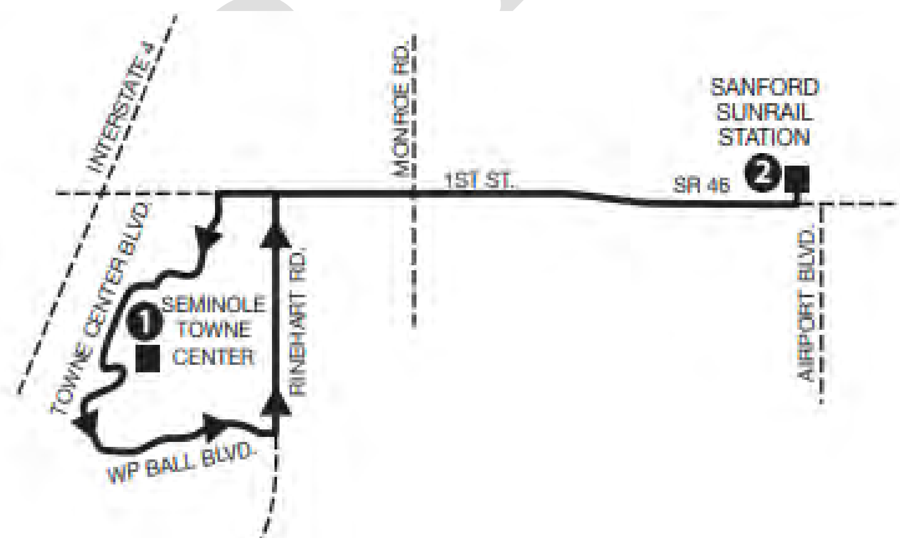
LINK 46 East **E. First St./Downtown Sanford**

Serving: Downtown Sanford, Central Florida Regional Hospital, Seminole County Services Building, True Health, and Sanford SunRail Station.



LINK 46 West **W. SR 46/Seminole Towne Center**

Serving: Seminole Towne Center, Walmart Rinehart Road, Super Target Rinehart Road, and Sanford SunRail Station.



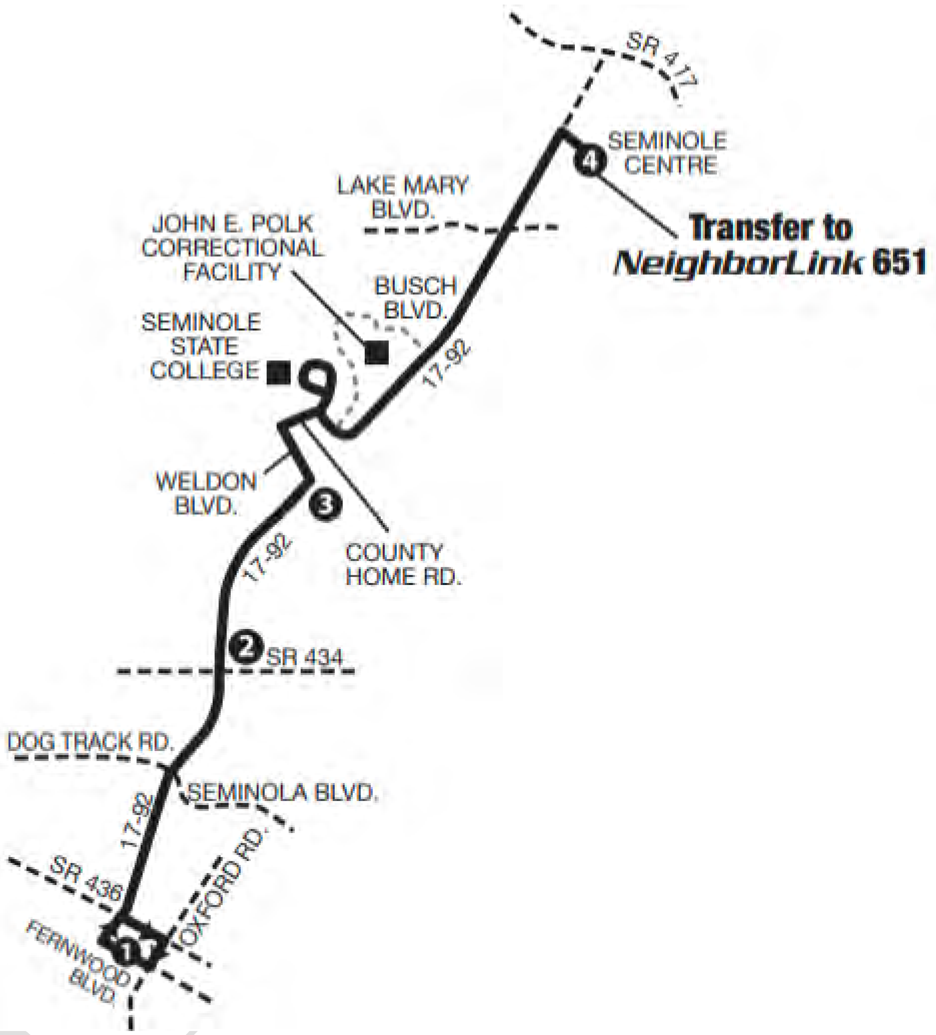
LINK 102 Orange Avenue/ South 17-92

Serving: LYNX Central Station, AdventHealth Orlando, Valencia College – Winter Park, Winter Park Tech, Maitland SunRail Station, Winter Park SunRail Station, and Fern Park Superstop.

23-C09

LINK 103 **North U.S. 17-92/ Seminole Centre**

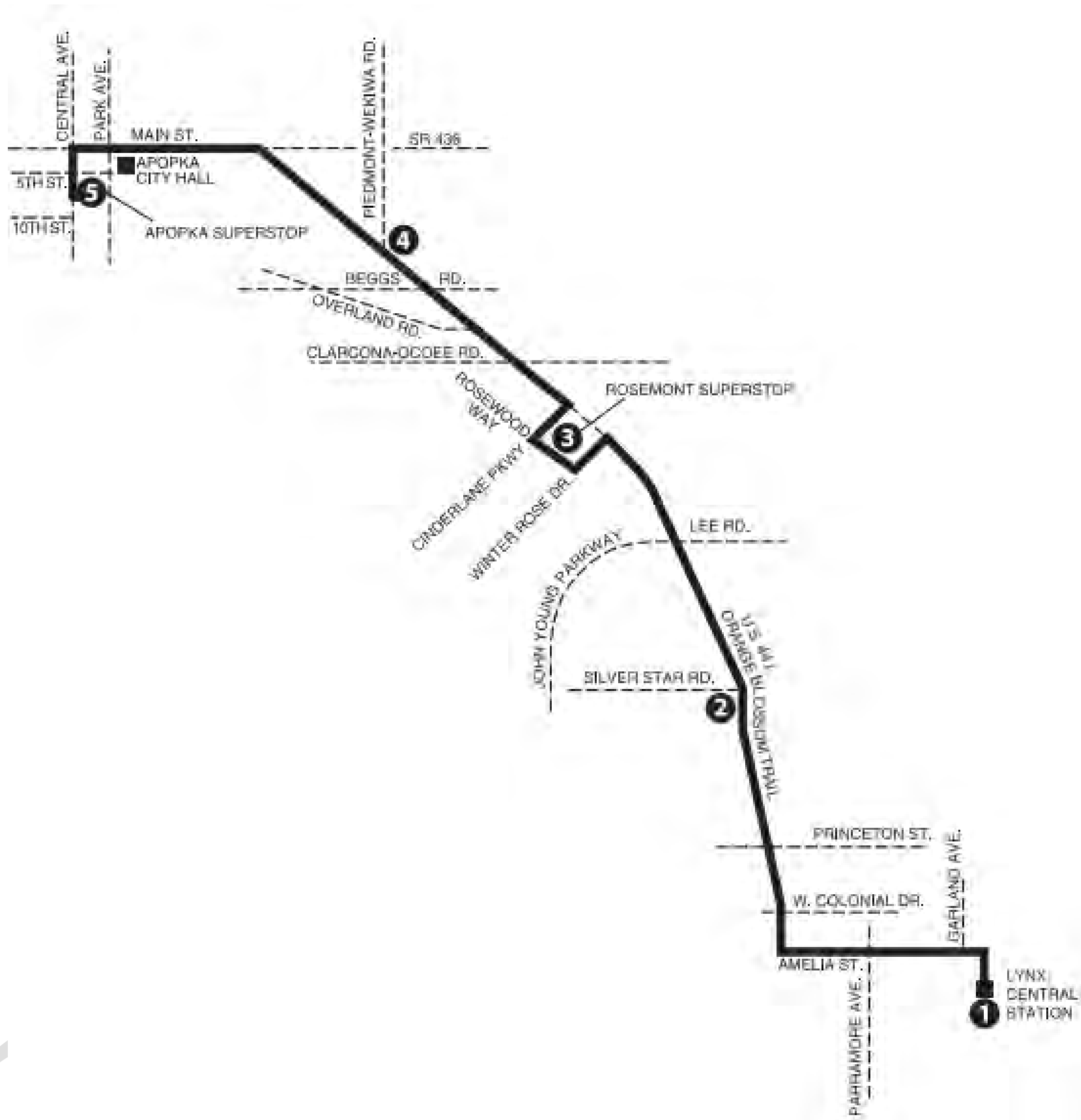
Serving: Fern Park Superstop, Seminole County Courthouse, Seminole Centre, and Seminole State College.



23-C09

LINK 106 North U.S. 441/Apopka

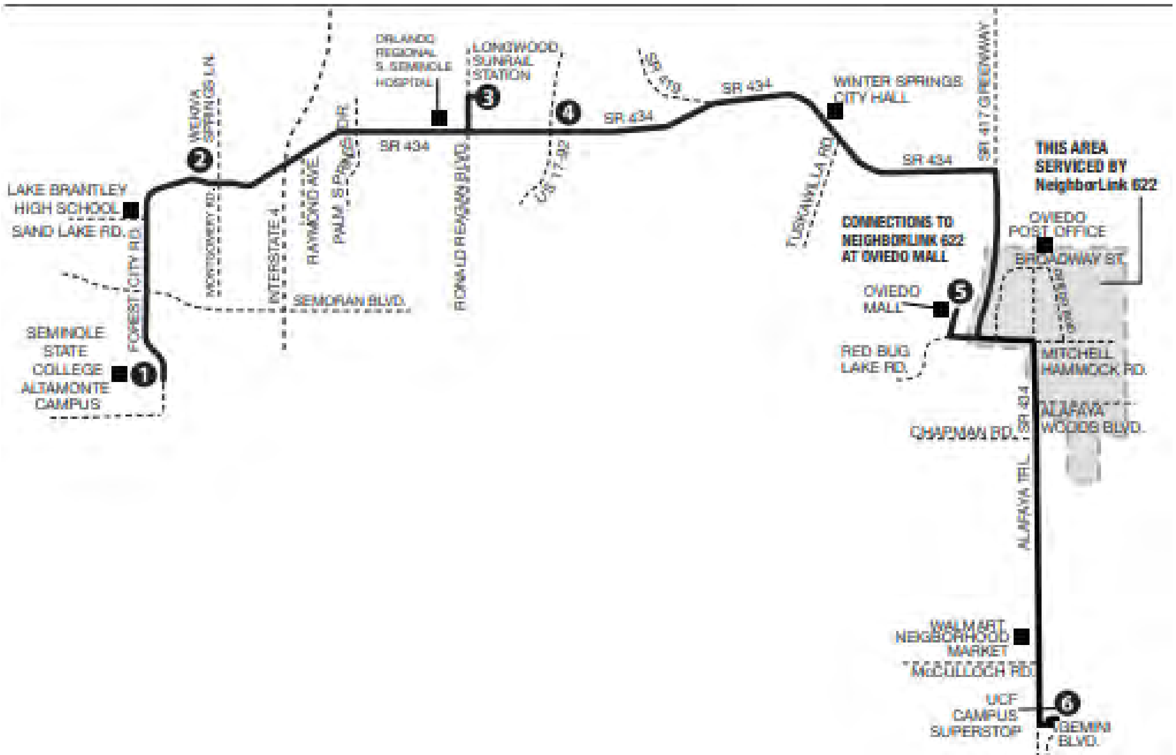
Serving: LYNX Central Station, OCPS Educational Leadership Center, Rosemont SuperStop, Lockhart, and Apopka SuperStop



23-C09

Link 434 S.R. 434

Serving: Seminole State College - Altamonte Campus, Lake Brantley High School, Winter Springs City Hall, South Seminole Hospital, Oviedo Mall, University of Central Florida SuperStop, and Longwood SunRail Station



Link 436N SR 436 Fernwood/Apopka

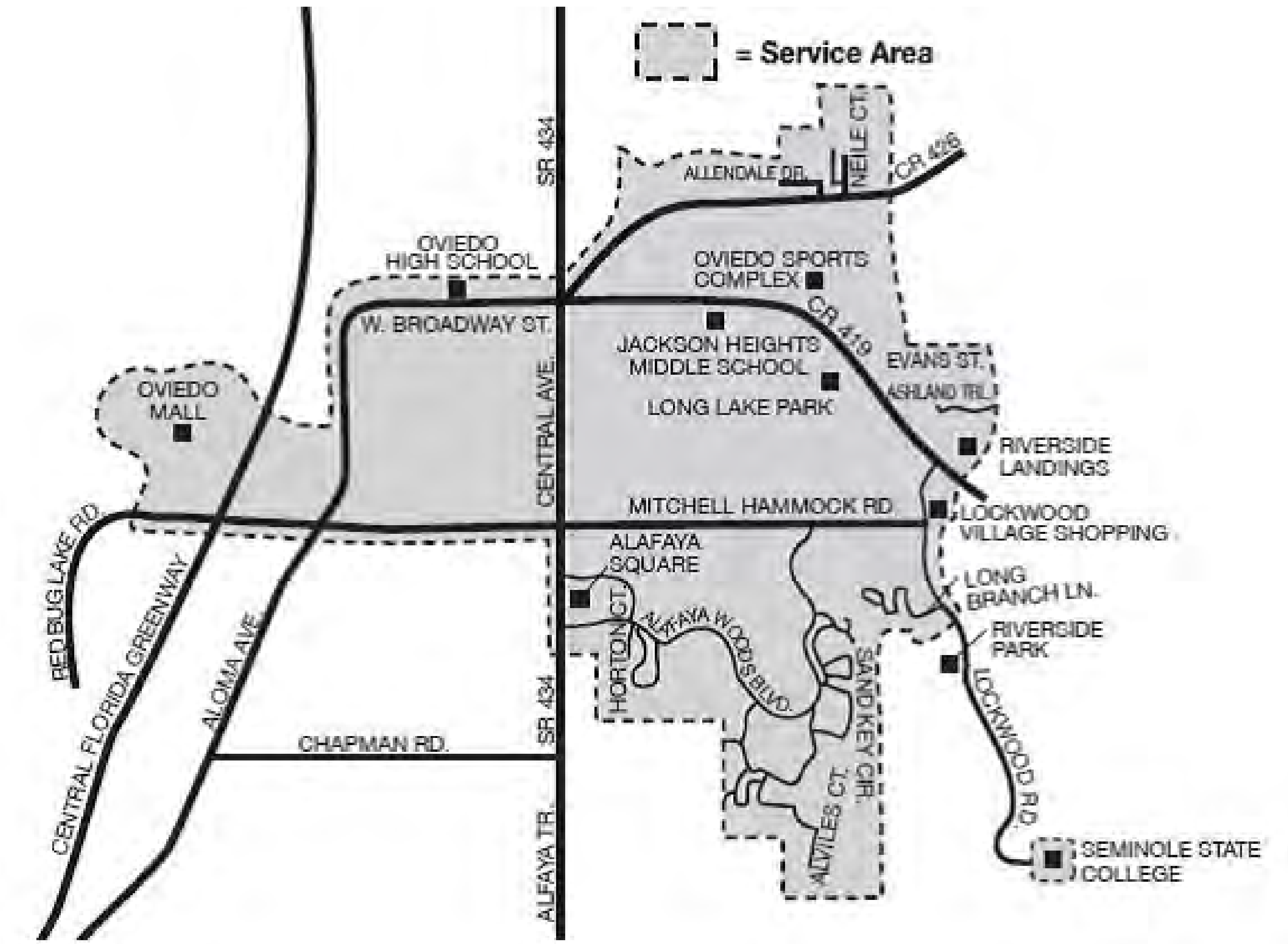
Serving: Apopka, Apopka SuperStop, West Town Center, Altamonte Mall, AdventHealth Altamonte, Fern Park, and Altamonte SunRail Station

Link 436S SR 436 Fernwood/Orlando International Airport

Serving: Fern Park Superstop, Casselberry, Azalea Park, and Orlando International Airport

NeighborLink 622 Oviedo

Serving: Seminole State College, Oviedo Mall, Link 434, Oviedo High School, Oviedo Sports Complex, Jackson Heights Middle School and Oviedo Medical Center



D

NeighborLink 651 Goldsboro

Serving: Sanford SunRail Station, Seminole Centre, Historic Goldsboro Blvd., Westside Community Center, Central Florida Regional Hospital, Seminole County Health & Human Services, Link 34, Link 45, Link 46E, Link 46W, and Link 103

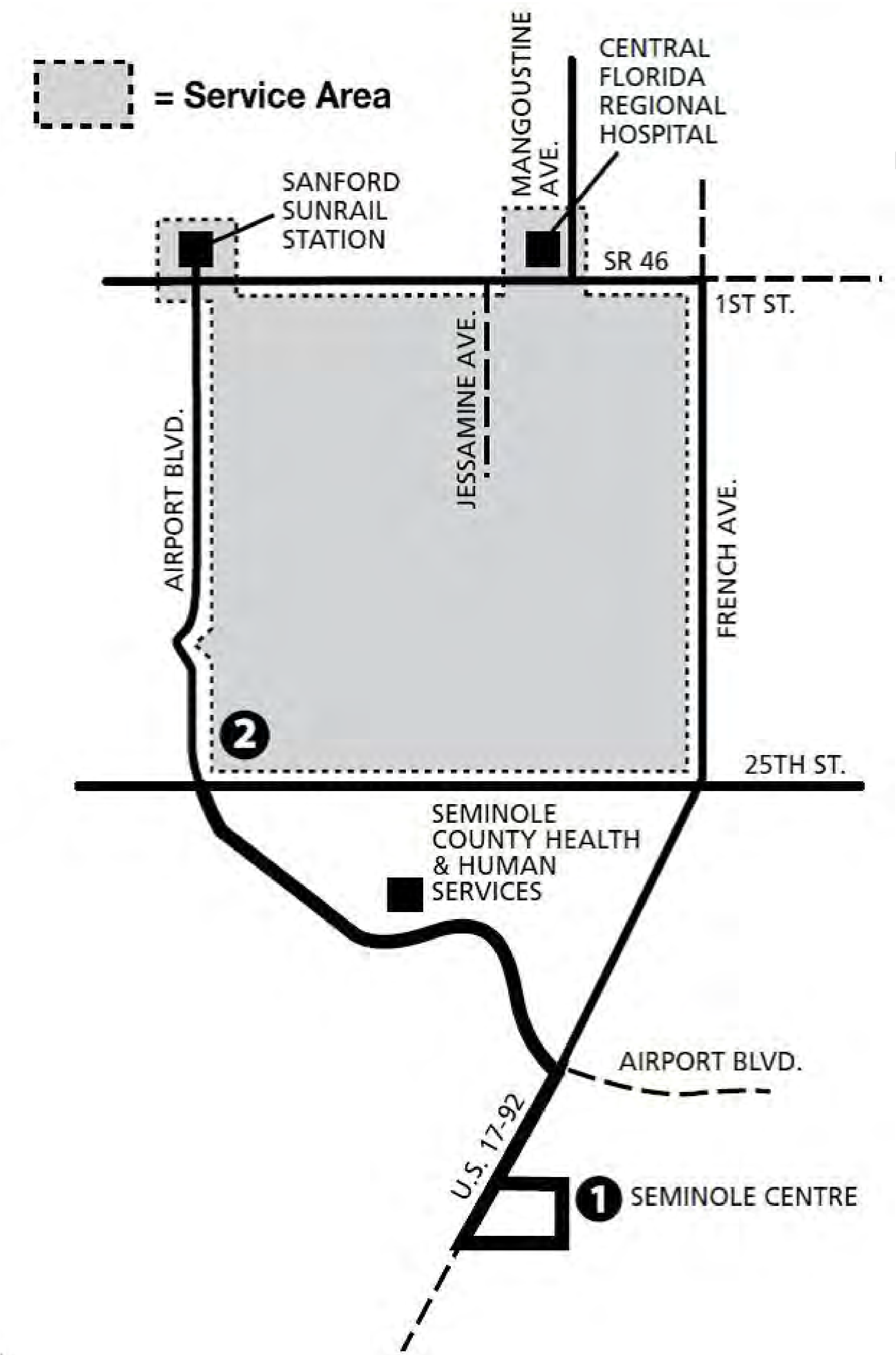


Exhibit "B"

Seminole County Transit Service Costs

Description of Appropriated Amount
October 1, 2022 through September 30, 2023

Fixed Route Operating Costs

Link Services	Amount
Link 1	$252,368
Link 23	$368,462
Link 34	$1,017,073
Link 45	$1,297,147
Link 46 E	$682,726
Link 46 W	$513,274
Link 102	$660,994
Link 103	$1,848,187
Link 106	$64,701
Link 434	$1,302,162
Link 436 S	$887,256
Link 436 N	$1,996,584
	$10,890,934

Operating Cost Recoveries	Amount
Estimated Farebox Recovery	($1,610,368)
SunRail Feeder Service	($540,050)
City of Sanford	($93,000)
City of Altamonte Springs	($120,900)
Lynx Non-Operating Cost Recoveries	($95,815)
LYNX Stabilzation Fund	($2,804,850)
	($5,264,983)

Net Fixed Route Cost **$5,625,951**

NeighborLink Operating Costs	Amount
NL 622	$188,942
NL 651	$200,528
	$389,470

ParaTransit Operating Costs	**Amount**
Americans with Disabilities Actu (ADA) Funding	$3,352,821
Transportation Disadvantaged (TD) Funding	$1,781,698
LYNX Stabilzation Fund	($901,456)
	$4,233,063

Total Operating Costs	**$10,248,484**

Capital Funding Cost	**Amount**
$3 per Hour Capital Funding	$376,712
	$376,712

Total County Transit Service Cost	**$10,625,196**

FY2023 Billing Schedule	
October-22	$885,433
November-22	$885,433
December-22	$885,433
January-23	$885,433
February-23	$885,433
March-23	$885,433
April-23	$885,433
May-23	$885,433
June-23	$885,433
July-23	$885,433
August-23	$885,433
September-23	$885,433
Annual Funding Request from County	**$10,625,196**

Exhibit "C"
Schedule Listing of LYNX Funding Partners

		FY2023 Funding Agreement
Operating Funding		
Orange County	$	59,280,043
Osceola County		10,464,246
Seminole County		10,248,484
Subtotal	$	79,992,773
City of Orlando	$	4,003,006
City of Orlando - LYMMO		2,861,057
FDOT (SunRail Feeder Route)		1,713,747
Reedy Creek		441,445
Altamonte Springs		120,900
City of Sanford		93,000
Subtotal	$	9,233,155
Subtotal Operating Funding	$	89,225,928
Capital Contributions		
Orange County	$	2,833,556
Osceola County		417,228
Seminole County		376,712
Subtotal	$	3,627,496
Total Local Funds	$	92,853,424

Action Agenda Item #6.B.

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
Michelle Daley
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization to Enter into the FY2023 Service Funding Agreements with the Municipal Funding Partners**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to enter into funding agreements with the Municipal Funding Partners listed below for the provision of public transportation services corresponding with its respective funding contribution for the Fiscal Year 2023 Budget.

To the extent there are any changes to the funding agreements, LYNX staff will negotiate those changes through an amendment to the addendum. This will allow the Chief Executive Officer or designee to enter into those funding agreements without further Board approval.

BACKGROUND:

The Cities of Orlando, Altamonte Springs, and Sanford (hereinafter, the Municipal Funding Partners) all recognize the need to provide public transportation services in an efficient manner and acknowledge the benefits of increased ridership on the regional public transportation system. LYNX and the Municipal Funding Partners desire to formally enter into service funding agreements to establish the most prudent utilization of resources and to target service improvements based upon traffic, levels of service, transit operations, and customer demand considerations.

The services and enhancements, which will be made and approved in this agreement, are in conformance with the LYNX Transportation Development Program (TDP).

The funding partner agreement for FY2023 contains the following:

a) A uniform funding agreement for all funding partners.
b) A provision that allows for continued monthly or quarterly payments by the funding partners subsequent to the end of each fiscal year.
c) An "addendum" to the contract that will provide for particular or unique requirements by the various funding partners.

A copy of the proposed service funding agreement that will be entered into between LYNX and each of the Municipal Funding Partners for Fiscal Year 2023 is attached. Authorization is requested from the Board for LYNX staff to complete the funding agreement with each funding partner. This will permit the funding agreements to be executed more quickly after the beginning of LYNX's fiscal year.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

Please reference the following Exhibit "C", which is included in each of the Municipal Funding Partners' Agreements.

23-C10 Service Funding Agreement
by and between
City of Orlando, Florida
and
Central Florida Regional Transportation Authority

THIS SERVICE FUNDING AGREEMENT ("Agreement") is made and entered into by and between CITY OF ORLANDO, FLORIDA, a municipal corporation duly created, organized, and existing under, and by virtue of the laws 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 III, 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 an Interlocal Agreement for Public Transit Services dated as of October 25, 2021 (the "**Prior Fiscal Year Funding Agreement**") pursuant to which the Funding Partner agreed to appropriate funds to LYNX for

fiscal year from October 1, 2021 to September 30, 2022 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, 2022; and

WHEREAS, the Funding Partner has budgeted funds for the fiscal year beginning on October 1, 2022 and ending on September 30, 2023 ("**Fiscal Year**") to support LYNX's Public Transportation services for such fiscal year; and

WHEREAS, LYNX and the Funding Partner wish to acknowledge that appropriate methodology has been used to determine the recommended level of funding by each Funding Partner; 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 only within the Service Area (as hereinafter defined).

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 meetings:

"**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 and Addenda.

"**Appropriated Amount**" means the amount to be paid to LYNX by the Funding Partner for the Current Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder, as set forth in Paragraph 3 hereof.

"**Current Fiscal Year**" shall mean the fiscal year beginning on October 1, 2022 and ending on September 30, 2023.

"**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).

"Demand Response Service" or "NeighborLink" means service provided in response to passenger requests made in advance to LYNX, which then dispatches a vehicle to pick up the

passengers and transport them to their destinations or to a fixed-route transfer point within a designated demand response service area.

"**Fiscal Year**" or "**Current Fiscal Year**" means the twelve (12) month period commencing October 1, 2022 and ending the following September 30, 2023.

"**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.

"**FDOT**" means the Florida Department of Transportation.

"**FTA**" means the Federal Transit Association.

"**New Appropriated Amount**" means the amount that is approved or appropriated by the Funding Partner for the Next Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder for the Next Fiscal Year, as set forth in Paragraph 3 below.

"**Next Fiscal Year**" means the twelve (12) month period immediately following the Current Fiscal Year, and is the period commencing October 1, 2023 and ending the following September 30, 2024.

"**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) **Current Fiscal Year.**

(i) The Funding Partner agrees to appropriate the amount specified on **Exhibit "B"** attached hereto (the "**Appropriated Amount**") to LYNX for the Fiscal Year for the provision of Public Transportation within the Service Area.

(ii) The Appropriated Amount shall be paid by the Funding Partner to LYNX in twelve (12) equal monthly installments, with each installment being due on the first day of each month. The first installment payment shall be due upon the later of (x) October 1, 2022 or (y) thirty (30) days after the execution date of this Agreement; and any other installment payments which would be due prior to the execution date of this Agreement shall also be paid within thirty (30) days after the execution date of this Agreement.

(iii) In the event that the Appropriated Amount is less than the amount suggested by the Funding Model to fully fund the agreed upon service level in the Funding Partner's Service Area, or in the event that the Appropriated Amount is less than the actual cost to fully fund the agreed upon service level in the Funding Partner's Service Area, LYNX may, at its discretion, (x) utilize reserves to fund the difference and continue to provide the requested service level, or (y) reduce the service level in the Funding Partner's Service Area to a level equivalent to the Appropriated Amount. However, in the event clause (x) is applicable, then the Funding Partner will promptly pay said difference to LYNX within thirty (30) days after the execution date of this Agreement.

(iv) In regard to Paragraph 3(a)(ii), above, for each monthly installment, LYNX will invoice the Funding Partner on a monthly basis and said amount shall be paid within thirty (30) days after the receipt by the Funding Partner of said invoice. However, in regard to any monthly installments that remain unpaid prior to the execution of this Agreement, those unpaid monthly installments (for which LYNX will furnish the Funding Partner invoices) will be paid within thirty (30) days after the execution date of the Agreement.

(b) **Next Fiscal Year.** If, prior to the termination date of this Agreement (as set forth in Paragraph 20 below), the Funding Partner and LYNX have not reached a written agreement setting forth an appropriation to LYNX for the Next Fiscal Year, then, notwithstanding the expiration of this Agreement at the end of the Current Fiscal Year and in order to continue the Public Transportation after said expiration, the Funding Partner shall continue to pay LYNX for the Next Fiscal Year the amount set forth below:

(i) The amount to be paid shall be the Appropriated Amount for the Current Fiscal Year. This Appropriated Amount for the Current Fiscal Year (the "**Post-Termination Payment**") shall be paid as provided herein.

(ii) LYNX will prepare and submit invoices for the Post Termination Payments and the Funding Partner will make such Post-Termination Payments within thirty (30) days after its receipt of such invoices from LYNX.

(iii) The Post Termination Payment shall be paid in equal monthly installments due on the first day of each month commencing October 1, 2022 until the earliest to occur of the following: (x) LYNX and the Funding Partner reach a written agreement setting forth a different appropriation for the Next Fiscal Year; (y) one hundred twenty (120) days following the 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 receives from LYNX the Public Transportation services provided herein; or (z) the date that LYNX actually discontinues the Public Transportation services to the Funding Partner, at which time this Agreement and specifically the provisions of this Subparagraph 3(b) will no longer be applicable. 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. If this Subparagraph 3(b) is applicable, the parties will reconcile the difference between the amount that was paid by the Funding Partner and the amount that has been agreed upon for the Next Fiscal Year in the first month following the earliest of the occurrences set forth above.

(iv) If a written agreement for the Next Fiscal Year is not entered into between LYNX and the Funding Partner by November 30 of the Next Fiscal Year, then, in that event, LYNX will undertake the necessary procedure for the discontinuation of the service which process takes approximately one hundred and twenty (120) days. If a new Funding Agreement for the Next Fiscal Year is not entered into by January 31 of the Next Fiscal Year, then LYNX may discontinue the service in accordance with its policies and the Funding Partner will in any event pay for any service provided for the Next Fiscal Year, including any service that may be provided of necessity by LYNX after January 31 in accordance with its procedures.

(c) 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 two percent (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.

To the extent that there is any increase or decrease of Fixed-Route Service hours greater than two percent (2%) (which would require approval of the Funding Partner), then, in that case, there will be a corresponding increase or decrease in the Appropriated Amount to be paid to LYNX by the Funding Partner from and after said increase or decrease is put into effect.

(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 Office of Regional Mobility 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, Demand Response 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 are plus or minus 10% and 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) Funding Model Information. Attached hereto as **Exhibit "C"** and is a schedule listing including the following:

(A) All of LYNX's funding partners;

(B) The amount of funding required of each funding partner by the Funding Model for the Current Fiscal Year;

(C) The amount each funding partner actually budgeted for the Current Fiscal Year to contribute for the services contemplated in the LYNX Funding Model;

(D) LYNX shall provide quarterly updates to **Exhibit "C"** by listing the amount each funding partner has paid to LYNX to date.

(viii) The amount of fund balance allocated to reserves.

(ix) 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. In the event the Funding Partner is the Breaching Party, the Funding Partner will nonetheless continue to pay to LYNX for any fixed route service furnished by LYNX up to the actual date that LYNX terminates said fixed route service, taking into account the policies and procedures to be followed by LYNX to terminate bus service generally (but not to exceed one hundred twenty (120) days).

(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 one hundred twenty (120) days receipt of written notice of termination from the party desiring to terminate this Agreement or such later date as specified in the notice.

The provisions of this Paragraph 7 are further subject to the rights of the parties to terminate this Agreement after the end of any fiscal year.

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.** If LYNX has questions regarding the application of Chapter 119, Florida Statues, to LYNX's duty to provide public records relating to this agreement, contact the funding partner's custodian of public records at**:**

City of Orlando
City Clerk's Office
400 S Orange Avenue, 2nd Floor
407-246-2148
cityclerk@orlando.gov

LYNX understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If LYNX will act on behalf of the Funding Partner, as provided under section 119.011(2), Florida Statutes, LYNX, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

(a) Keep and maintain public records required by the Funding Partner to perform the service.

(b) Upon request from the Funding Partner's custodian of public records, provide the Funding Partner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if LYNX does not transfer the records to the Funding Partner.

(d) Subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, upon completion of the contract, transfer, at no cost, to the Funding Partner all public records in possession of the LYNX or keep and maintain public records required by the Funding Partner to perform the service. If LYNX transfers all public records to the Funding Partner upon completion of the contract, LYNX shall, subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LYNX keeps and maintains public records upon completion of the contract, LYNX shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Funding Partner, upon request from the Funding Partner's custodian of public records, in a format that is compatible with the information technology systems of the Funding Partner.

(e) If LYNX does not comply with a public records request, the Funding Partner shall enforce the contract provisions in accordance with the Agreement.

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. **Compliance with FTA/FDOT Requirements**. The provisions of this Agreement, and the Public Transportation to be provided by LYNX hereunder, is subject at all times to the applicable statutes and rules and regulations of all applicable governmental authorities, including those of the FTA and FDOT. In the event any such statutes or rules or regulations would require a substantial and material change to this Agreement, then the parties will immediately meet to review and make acceptable adjustments to this Agreement so as to comply with such statutes and rules and regulations.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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: Tanya J. Wilder, Director of Transportation
With copy to:	City of Orlando 400 South Orange Avenue, P.O. Box 44990 Orlando, Florida 32802-4990 Attn: City Attorney's Office
As to LYNX:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer
With copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Leonard Antmann, Chief Financial Officer
With a copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Carrie L. Sarver, Esq., B.C.S., Senior In-House Counsel

2

19. **<u>Binding Agreement</u>.** This Agreement is binding upon the parties and shall inure to their successors or assigns.

20. **<u>Effective Date</u>.** The effective date of this Agreement shall be October 1, 2022. Unless terminated earlier in accordance with Paragraph 7 of this Agreement, this Agreement will terminate on September 30, 2023, except for the provisions of this Agreement which by their terms survive the termination of this Agreement.

21. **<u>Negotiations</u>.** 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.

22. **<u>No Third-Party Beneficiaries</u>.** 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.

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

ATTEST:

By: ______________________________
City Clerk

For the use and reliance of the City of Orlando only. Approved as to form and legal sufficiency.

____
City Attorney

FUNDING PARTNER:

CITY OF ORLANDO, FLORIDA

By: ______________________________
Buddy Dyer, Mayor

Date: ______________________________

SIGNATURE PAGE FOR LYNX

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By:___________________________________

Name: Tiffany Homler Hawkins.

Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: ________________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ________________________________

Name: Carrie L. Sarver, Esq., B.C.S.

Title: Senior In-House Counsel

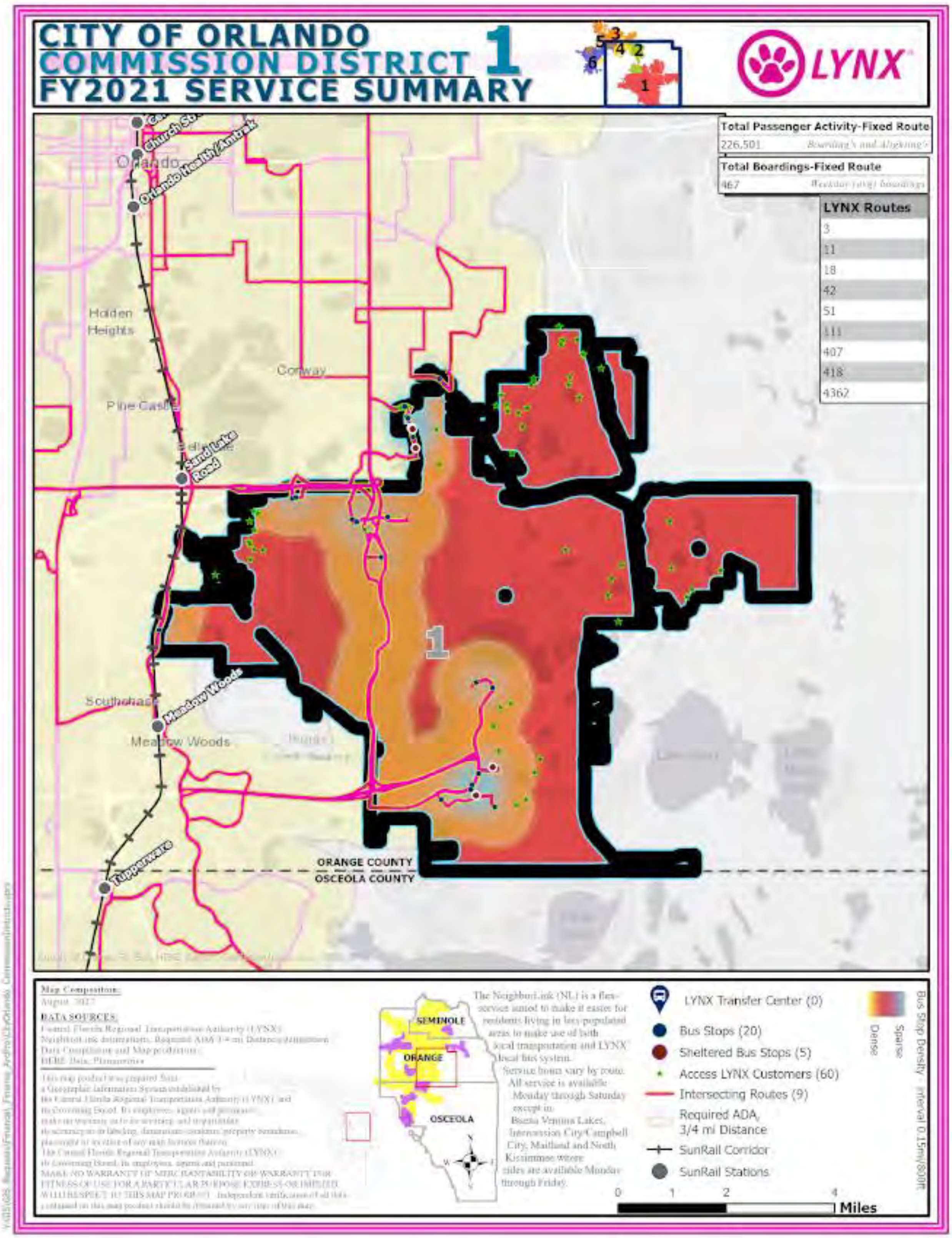
Date:________________________________

ADDENDUM

Both parties agree that in the future LYNX may be requested by the Funding Partner to participate in the Orlando Future-Ready Initiatives including strategies to provide safe, affordable transportation services, the scope and cost of which will be agreed upon by the parties at a future date. It is further agreed that the Funding Partner will reimburse LYNX for all project costs associated with such a request.

Exhibit "A"

DESCRIPTION OF SERVICE AREA



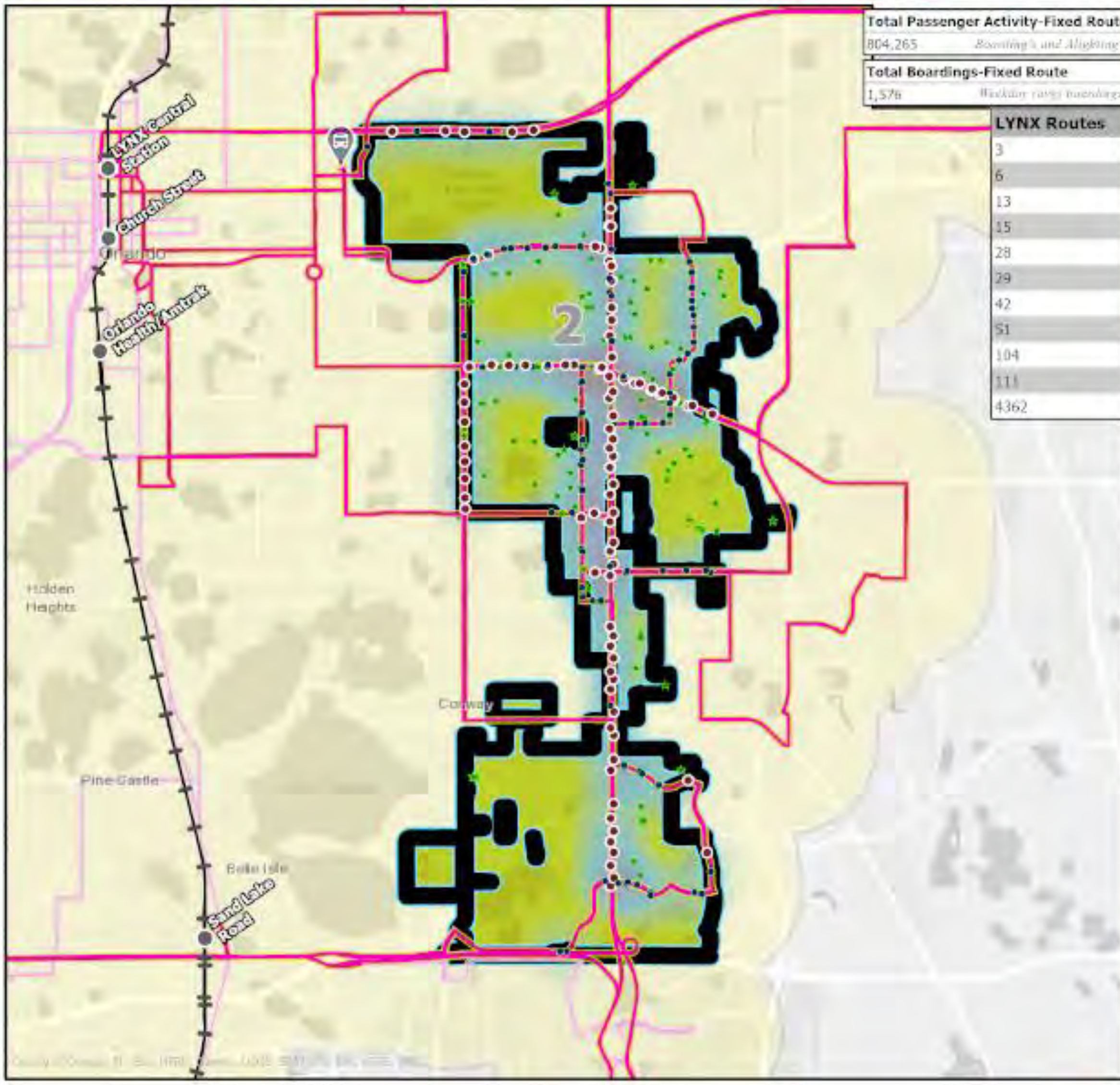
CITY OF ORLANDO COMMISSION DISTRICT 2 FY2021 SERVICE SUMMARY

LYNX

Total Passenger Activity-Fixed Route	
804,265	Boarding's and Alighting's

Total Boardings-Fixed Route	
1,576	Weekday range boardings

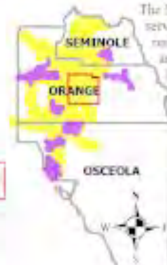
LYNX Routes
3
6
13
15
28
29
42
51
104
111
4362



Map Composition:
August 2021

DATA SOURCES:
HERE Data, Planimetrics

MAKE NO WARRANTY OF MERCHANTABILITY OR WARRANTY FOR FITNESS OF USE FOR A PARTICULAR PURPOSE EXPRESS OR IMPLIED WITH RESPECT TO THIS MAP PRODUCT.



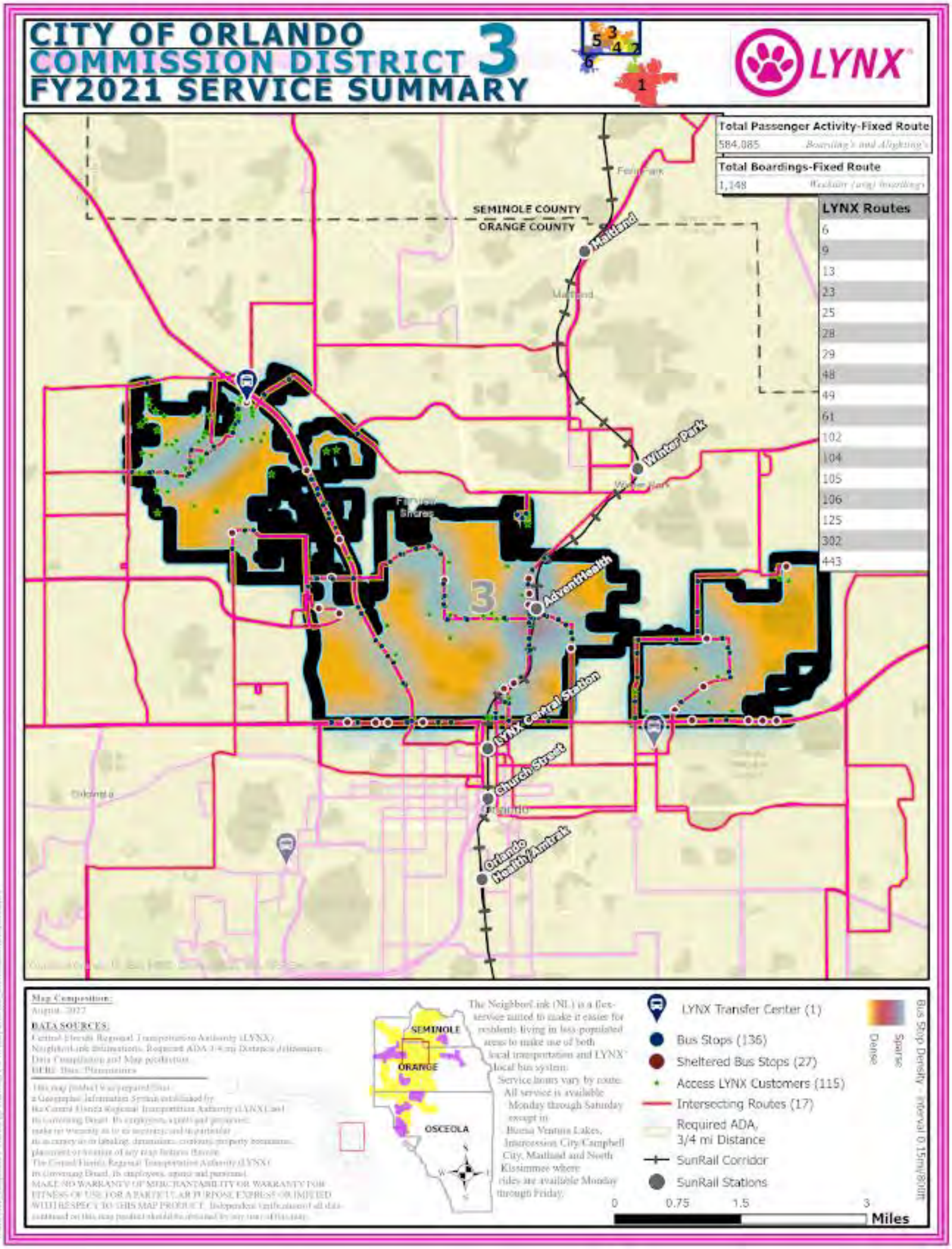
The NeighborLink (NL) is a flex-service aimed to make it easier for residents living in less-populated areas to make use of both local transportation and LYNX' local bus system. Service hours vary by route. All service is available Monday through Saturday except in Buena Ventura Lakes, Intercession City/Campbell City, Maitland and North Kissimmee where rides are available Monday through Friday.

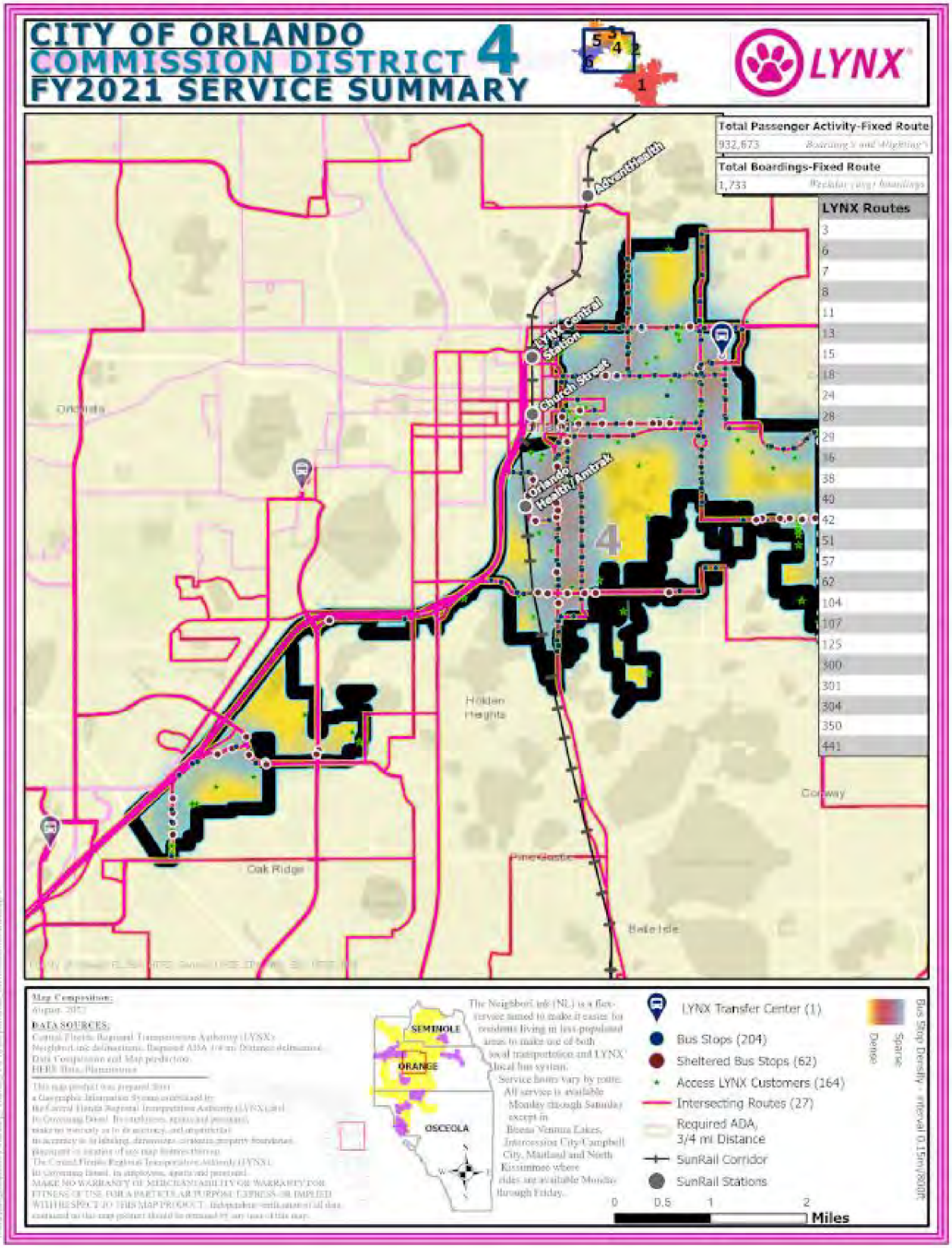
- LYNX Transfer Center (0)
- Bus Stops (99)
- Sheltered Bus Stops (90)
- Access LYNX Customers (160)
- Intersecting Routes (11)
- Required ADA, 3/4 mi Distance
- SunRail Corridor
- SunRail Stations

Bus Stop Density - interval 0.15mi/800ft
Dense Sparse

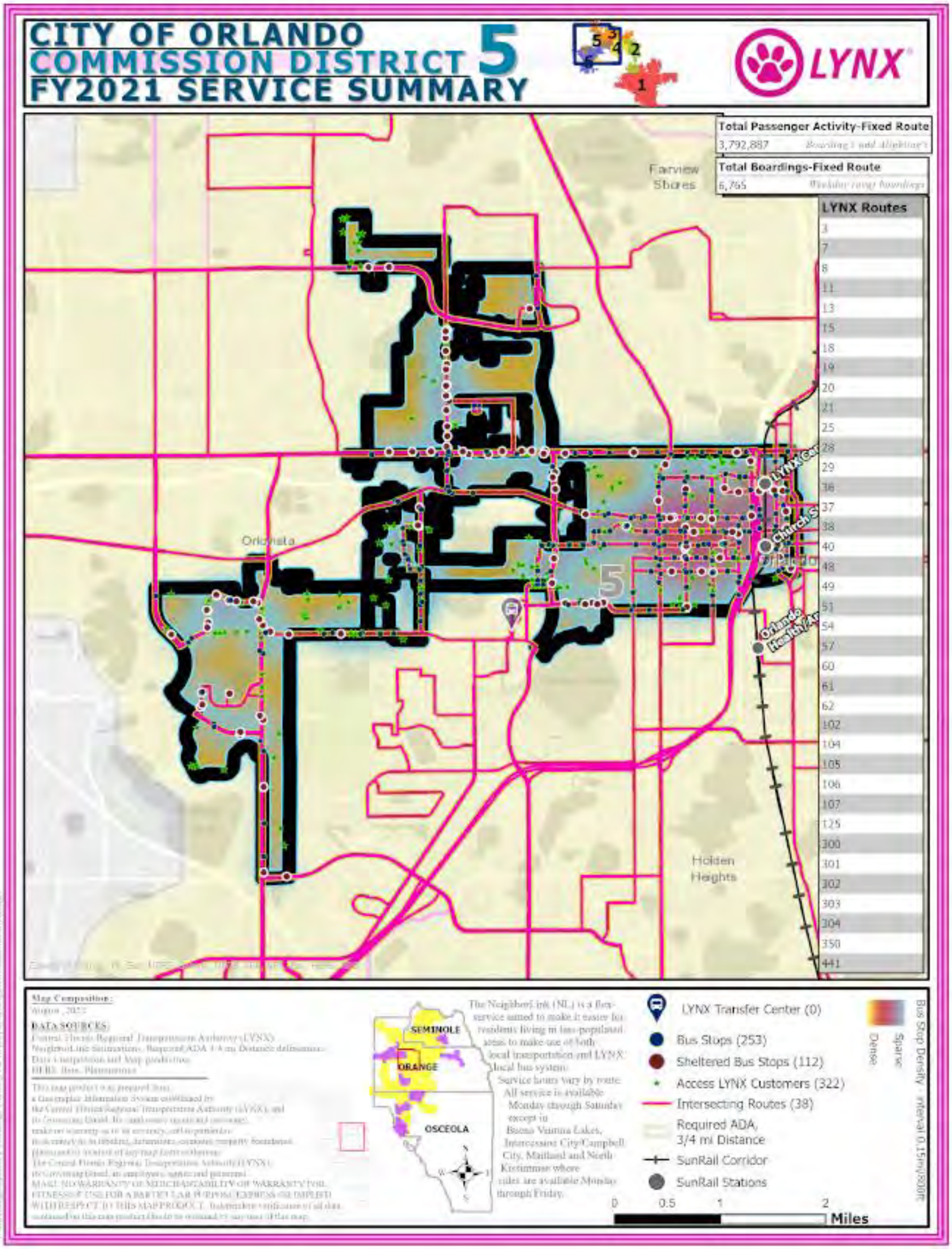
0 0.5 1 2 Miles

23-C10

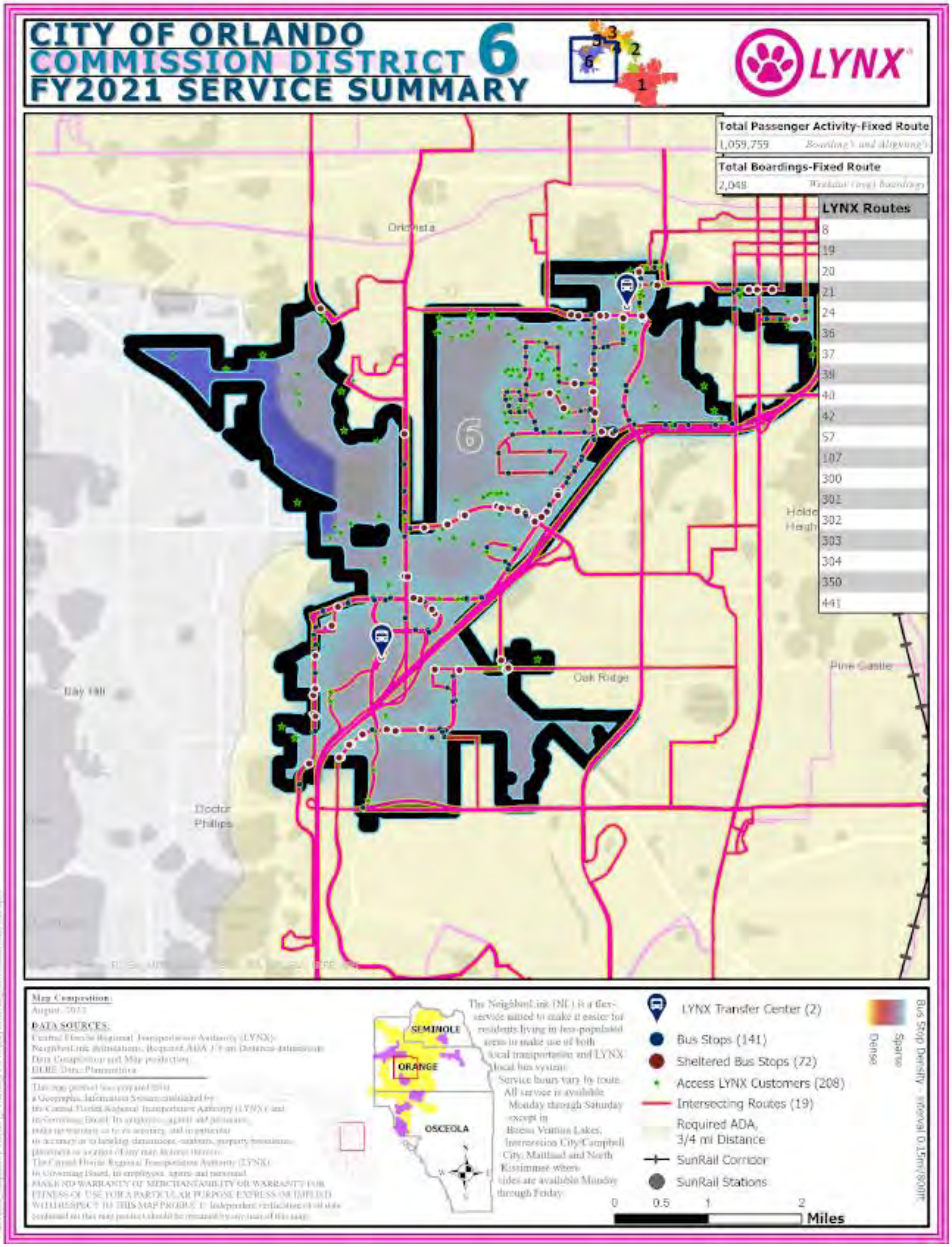

CITY OF ORLANDO
COMMISSION DISTRICT 3
FY2021 SERVICE SUMMARY
LYNX
Total Passenger Activity-Fixed Route
584,085
Total Boardings-Fixed Route
1,148
LYNX Routes
6
9
13
23
25
28
29
48
49
61
102
104
105
106
125
302
443
SEMINOLE COUNTY
ORANGE COUNTY
Maitland
Winter Park
AdventHealth
LYNX Central Station
Church Street
Orlando Health/Amtrak
3
Map Composition:
DATA SOURCES:
The NeighborLink (NL) is a flex-service suited to make it easier for residents living in less-populated areas to make use of both local transportation and LYNX' local bus system.
Service hours vary by route. All service is available Monday through Saturday except in Buena Ventura Lakes, Intercession City/Campbell City, Maitland and North Kissimmee where rides are available Monday through Friday.
SEMINOLE
ORANGE
OSCEOLA
LYNX Transfer Center (1)
Bus Stops (136)
Sheltered Bus Stops (27)
Access LYNX Customers (115)
Intersecting Routes (17)
Required ADA, 3/4 mi Distance
SunRail Corridor
SunRail Stations
Dense
Sparse
Bus Stop Density - Interval 0.15mi/800ft
0
0.75
1.5
3
Miles



CITY OF ORLANDO
COMMISSION DISTRICT 4
FY2021 SERVICE SUMMARY
LYNX
Total Passenger Activity-Fixed Route
932,673
Total Boardings-Fixed Route
1,733
LYNX Routes
3
6
7
8
11
13
15
18
24
28
29
36
38
40
42
51
57
62
104
107
125
300
301
304
350
441
AdventHealth
LYNX Central Station
Church Street
Orlando Health/Amtrak
Holden Heights
Oak Ridge
Conway
Belle Isle
Map Composition:
DATA SOURCES:
SEMINOLE
ORANGE
OSCEOLA
The NeighborLink (NL) is a flex-service aimed to make it easier for residents living in less-populated areas to make use of both local transportation and LYNX' local bus system.
Service hours vary by route. All service is available Monday through Saturday except in Buena Ventura Lakes, Intercession City/Campbell City, Maitland and North Kissimmee where rides are available Monday through Friday.
LYNX Transfer Center (1)
Bus Stops (204)
Sheltered Bus Stops (62)
Access LYNX Customers (164)
Intersecting Routes (27)
Required ADA, 3/4 mi Distance
SunRail Corridor
SunRail Stations
Bus Stop Density - Interval 0.15mi/800ft
Dense
Sparse
0
0.5
1
2
Miles


CITY OF ORLANDO
COMMISSION DISTRICT 5
FY2021 SERVICE SUMMARY
LYNX
Total Passenger Activity-Fixed Route
3,792,887
Total Boardings-Fixed Route
6,765
LYNX Routes
3
7
8
11
13
15
18
19
20
21
25
28
29
36
37
38
40
48
49
51
54
57
60
61
62
102
104
105
106
107
125
300
301
302
303
304
350
441
Fairview Shores
Orlovista
Holden Heights
LYNX Central
Church St
Orlando Health/Amtrak
5
Map Composition:
DATA SOURCES:
SEMINOLE
ORANGE
OSCEOLA
The NeighborLink (NL) is a flex-service aimed to make it easier for residents living in less-populated areas to make use of both local transportation and LYNX' local bus system.
Service hours vary by route. All service is available Monday through Saturday except in Buena Ventura Lakes, Intercession City/Campbell City, Maitland and North Kissimmee where rides are available Monday through Friday.
LYNX Transfer Center (0)
Bus Stops (253)
Sheltered Bus Stops (112)
Access LYNX Customers (322)
Intersecting Routes (38)
Required ADA, 3/4 mi Distance
SunRail Corridor
SunRail Stations
Bus Stop Density - interval 0.15mi/500ft
Dense
Sparse
0
0.5
1
2
Miles

23-C10


CITY OF ORLANDO
COMMISSION DISTRICT 6
FY2021 SERVICE SUMMARY
LYNX
Total Passenger Activity-Fixed Route
1,059,759
Boarding's and Alighting's
Total Boardings-Fixed Route
2,048
Weekday (avg) Boardings
LYNX Routes
8
19
20
21
24
36
37
38
40
42
57
107
300
301
302
303
304
350
441
6
Oak Ridge
Pine Castle
Doctor Phillips
Bay Hill
Map Composition:
DATA SOURCES:
SEMINOLE
ORANGE
OSCEOLA
Service hours vary by route.
All service is available
Monday through Saturday
LYNX Transfer Center (2)
Bus Stops (141)
Sheltered Bus Stops (72)
Access LYNX Customers (208)
Intersecting Routes (19)
Required ADA,
3/4 mi Distance
SunRail Corridor
SunRail Stations
Bus Stop Density - Interval 0.15mi/800ft
Dense
Sparse
0
0.5
1
2
Miles

23-C10

Exhibit "B"
APPROPRIATED AMOUNT

October 2022 through September 2023 $4,003,006

Exhibit B City of Orlando Transit Service Costs For FY2023	
Total City Transit Service Cost	**$ 4,003,006**

FY2023 Billing Schedule:	
October 2022	$ 1,000,751
January 2023	$ 1,000,751
April 2023	$ 1,000,751
July 2023	$ 1,000,753
Annual Funding Request from City	**$ 4,003,006**

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Exhibit "C"
Schedule Listing of LYNX Funding Partners

		FY2023 Funding Agreement
Operating Funding		
Orange County	$	59,280,043
Osceola County		10,464,246
Seminole County		10,248,484
Subtotal	$	79,992,773
City of Orlando	$	4,003,006
City of Orlando - LYMMO		2,861,057
FDOT (SunRail Feeder Route)		1,713,747
Reedy Creek		441,445
Altamonte Springs		120,900
City of Sanford		93,000
Subtotal	$	9,233,155
Subtotal Operating Funding	$	89,225,928
Capital Contributions		
Orange County	$	2,833,556
Osceola County		417,228
Seminole County		376,712
Subtotal	$	3,627,496
Total Local Funds	$	92,853,424

23-C06 Service Funding Agreement
by and between
City of Altamonte Springs, Florida
and
Central Florida Regional Transportation Authority

THIS SERVICE FUNDING AGREEMENT ("Agreement") is made and entered into by and between **CITY OF ALTAMONTE SPRINGS, FLORIDA**, a Florida municipal corporation, whose principal address is 225 Newburyport Avenue, Altamonte Springs, Florida 32701 (hereinafter the "**Funding Partner**"), and the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate created pursuant to Part III, 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 an Interlocal Agreement for Public Transit Services dated as of October 5, 2021 (the "**Prior Fiscal Year Funding Agreement**") pursuant to which the Funding Partner agreed to appropriate funds to LYNX for fiscal year from October 1, 2021 to September 30, 2022 and

WHEREAS, the term of the Prior Fiscal Year Funding Agreement ended on September 30, 2022; and

WHEREAS, the Funding Partner has budgeted funds for the fiscal year beginning on October 1, 2022 and ending on September 30, 2023 ("**Fiscal Year**") to support LYNX's Public Transportation services for such fiscal year; and

WHEREAS, LYNX and the Funding Partner wish to acknowledge that appropriate methodology has been used to determine the recommended level of funding by each Funding Partner; 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 only within the Service Area (as hereinafter defined).

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 meetings:

"**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 and Addenda.

"**Appropriated Amount**" means the amount to be paid to LYNX by the Funding Partner for the Current Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder, as set forth in Paragraph 3 hereof.

"**Current Fiscal Year**" means the fiscal year beginning on October 1, 2022 and ending on September 30, 2023.

"**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).

"Demand Response Service" or "NeighborLink" means service provided in response to passenger requests made in advance to LYNX, which then dispatches a vehicle to pick up the passengers and transport them to their destinations or to a fixed-route transfer point within a designated demand response service area.

"**Fiscal Year**" or "**Current Fiscal Year**" means the twelve (12) month period commencing October 1, 2022 and ending the following September 30, 2023.

"**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.

"**FDOT**" means the Florida Department of Transportation.

"**FTA**" means the Federal Transit Association.

"**New Appropriated Amount**" means the amount that is approved or appropriated by the Funding Partner for the Next Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder for the Next Fiscal Year, as set forth in Paragraph 3 below.

"**Next Fiscal Year**" means the twelve (12) month period immediately following the Current Fiscal Year, and is the period commencing October 1, 2023 and ending the following September 30, 2024.

"**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) **Current Fiscal Year.**

(i) The Funding Partner agrees to appropriate the amount specified on **Exhibit "B"** attached hereto (the "**Appropriated Amount**") to LYNX for the Fiscal Year for the provision of Public Transportation within the Service Area.

(ii) The Appropriated Amount shall be paid by the Funding Partner to LYNX in twelve (12) equal monthly installments, with each installment being due on the first day of each month. The first installment payment shall be due upon the later of (x) October 1, 2022 or (y) thirty (30) days after the execution date of this Agreement; and any other installment payments which would be due prior to the execution date of this Agreement shall also be paid within thirty (30) days after the execution date of this Agreement.

(iii) In the event that the Appropriated Amount is less than the amount suggested by the Funding Model to fully fund the agreed upon service level in the Funding Partner's Service Area, or in the event that the Appropriated Amount is less than the actual cost to fully fund the agreed upon service level in the Funding Partner's Service Area, LYNX may, at its discretion, (x) utilize reserves to fund the difference and continue to provide the requested service level, or (y) reduce the service level in the Funding Partner's Service Area to a level equivalent to the Appropriated Amount. However, in the event clause (x) is applicable, then the Funding Partner will promptly pay said difference to LYNX within thirty (30) days after the execution date of this Agreement.

(iv) In regard to Paragraph 3(a)(ii), above, for each monthly installment, LYNX will invoice the Funding Partner on a monthly basis and said amount shall be paid within thirty (30) days after the receipt by the Funding Partner of said invoice. However, in regard to any monthly installments that remain unpaid prior to the execution of this Agreement, those unpaid monthly installments (for which LYNX will furnish the Funding Partner invoices) will be paid within thirty (30) days after the execution date of the Agreement.

(b) **Next Fiscal Year.** If, prior to the termination date of this Agreement (as set forth in Paragraph 20 below), the Funding Partner and LYNX have not reached a written agreement setting forth an appropriation to LYNX for the Next Fiscal Year, then, notwithstanding the expiration of this Agreement at the end of the Current Fiscal Year and in order to continue the Public Transportation after said expiration, the Funding Partner shall continue to pay LYNX for the Next Fiscal Year the amount set forth below:

(i) The amount to be paid shall be the Appropriated Amount for the Current Fiscal Year. This Appropriated Amount for the Current Fiscal Year (the "**Post-Termination Payment**") shall be paid as provided herein.

(ii) LYNX will prepare and submit invoices for the Post Termination Payments and the Funding Partner will make such Post-Termination Payments within thirty (30) days after its receipt of such invoices from LYNX.

(iii) The Post Termination Payment shall be paid in equal monthly installments due on the first day of each month commencing October 1, 2022 until the earliest to occur of the following: (x) LYNX and the Funding Partner reach a written agreement setting forth a different appropriation for the Next Fiscal Year; (y) one hundred twenty (120) days following the 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 receives from LYNX the Public Transportation services provided herein; or (z) the date that LYNX actually discontinues the Public Transportation services to the Funding Partner, at which time this Agreement and specifically the provisions of this Subparagraph 3(b) will no longer be applicable. 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. If this Subparagraph 3(b) is applicable, the parties will reconcile the difference between the amount that was paid by the Funding Partner and the amount that has been agreed upon for the Next Fiscal Year in the first month following the earliest of the occurrences set forth above.

(iv) If a written agreement for the Next Fiscal Year is not entered into between LYNX and the Funding Partner by November 30 of the Next Fiscal Year, then, in that event, LYNX will undertake the necessary procedure for the discontinuation of the service which process takes approximately one hundred and twenty (120) days. If a new Funding Agreement for the Next Fiscal Year is not entered into by January 31 of the Next Fiscal Year, then LYNX may discontinue the service in accordance with its policies and the Funding Partner will in any event pay for any service provided for the Next Fiscal Year, including any service that may be provided of necessity by LYNX after January 31 in accordance with its procedures.

(c) 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 two percent (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.

To the extent that there is any increase or decrease of Fixed-Route Service hours greater than two percent (2%) (which would require approval of the Funding Partner), then, in that case, there will be a corresponding increase or decrease in the Appropriated Amount to be paid to LYNX by the Funding Partner from and after said increase or decrease is put into effect.

(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 Office of Regional Mobility 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, Demand Response 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 are plus or minus 10% and 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) Funding Model Information. Attached hereto as **<u>Exhibit "C"</u>** and is a schedule listing including the following:

(A) All of LYNX's funding partners;

(B) The amount of funding required of each funding partner by the Funding Model for the Current Fiscal Year; and

(C) The amount each funding partner actually budgeted for the Current Fiscal Year to contribute for the services contemplated in the LYNX Funding Model.

(D) LYNX shall provide quarterly updates to **<u>Exhibit "C"</u>** by listing the amount each funding partner has paid to LYNX to date.

(viii) The amount of fund balance allocated to reserves.

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

(c) **<u>Additional Reporting</u>**. 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. **<u>Independent Contractor</u>**. 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. In the event the Funding Partner is the Breaching Party, the Funding Partner will nonetheless continue to pay to LYNX for any fixed route service furnished by LYNX up to the actual date that LYNX terminates said fixed route service, taking into account the policies and procedures to be followed by LYNX to terminate bus service generally (but not to exceed one hundred twenty (120) days).
>
> (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 one hundred twenty (120) days receipt of written notice of termination from the party desiring to terminate this Agreement or such later date as specified in the notice.

The provisions of this Paragraph 7 are further subject to the rights of the parties to terminate this Agreement after the end of any fiscal year.

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.** If LYNX has questions regarding the application of Chapter 119, Florida Statues, to LYNX's duty to provide public records relating to this agreement, contact the funding partner's custodian of public records at**:**

City of Altamonte Springs
City Clerk's Office
225 Newburyport Avenue
Altamonte Springs, Florida 32701
407-571-8000
cityclerk@altamonte.org

LYNX understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If LYNX will act on behalf of the Funding Partner, as provided under section 119.011(2), Florida Statutes, LYNX, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

(a) Keep and maintain public records required by the Funding Partner to perform the service.

(b) Upon request from the Funding Partner's custodian of public records, provide the Funding Partner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if LYNX does not transfer the records to the Funding Partner.

(d) Subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, upon completion of the contract, transfer, at no cost, to the Funding Partner all public records in possession of the LYNX or keep and maintain public records required by the Funding Partner to perform the service. If LYNX transfers all public records to the Funding Partner upon completion of the contract, LYNX shall, subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LYNX keeps and maintains public records upon completion of the contract, LYNX shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Funding Partner, upon request from the Funding Partner's custodian of public records, in a format that is compatible with the information technology systems of the Funding Partner.

(e) If LYNX does not comply with a public records request, the Funding Partner shall enforce the contract provisions in accordance with the Agreement.

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. **Compliance with FTA/FDOT Requirements**. The provisions of this Agreement, and the Public Transportation to be provided by LYNX hereunder, is subject at all times to the applicable statutes and rules and regulations of all applicable governmental authorities, including those of the FTA and FDOT. In the event any such statutes or rules or regulations would require a substantial and material change to this Agreement, then the parties will immediately meet to review and make acceptable adjustments to this Agreement so as to comply with such statutes and rules and regulations.

12. **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 Eighteenth Circuit in and for Seminole County, Florida or the United States District Court for the Middle District of Florida, Orlando Division.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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 Altamonte Springs
225 Newburyport Avenue
Altamonte Springs, Florida 32701
Attn: Franklin W. Martz, II, City Manager

With copy to:	City of Altamonte Springs 225 Newburyport Avenue Altamonte Springs, Florida 32701 Attn: Community Development Agency
As to LYNX:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer
With copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Leonard Antmann, Chief Financial Officer
With a copy to:	Central Florida Regional Transportation Authority 455 North Garland Avenue Orlando, Florida 32801-1518 Attn: Carrie L. Sarver, Esq., B.C.S., Senior In-House Counsel

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

20. **Effective Date.** The effective date of this Agreement shall be October 1, 2022. Unless terminated earlier in accordance with Paragraph 7 of this Agreement, this Agreement will terminate on September 30, 2023, except for the provisions of this Agreement which by their terms survive the termination of this Agreement.

21. **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.

22. **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.

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. **<u>Addendum</u>**. There is attached hereto a certain Addendum consisting of one (NA) 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.

25. **<u>E-Verify</u>**. Compliance with Section 448.095 includes, but is not limited to, utilization of the E-Verify system to verify the work authorization status of all newly hired employees, and requiring all sub-contractors to provide an affidavit attesting that the sub-contractor does not employ, contract with, or sub-contract with, an unauthorized alien.

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]

<u>**SIGNATURE PAGE FOR FUNDING PARTNER**</u>

ATTEST:

By: ______________________________
City Clerk

For the use and reliance of City of Altamonte Springs only. Approved as to form and legal sufficiency.

____
City Attorney

FUNDING PARTNER:

CITY OF ALTAMONTE SPRINGS, FLORIDA

By: ______________________________
Pat Bates, Mayor

Date: ______________________________

SIGNATURE PAGE FOR LYNX

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By:__________________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: ________________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ________________________________
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel

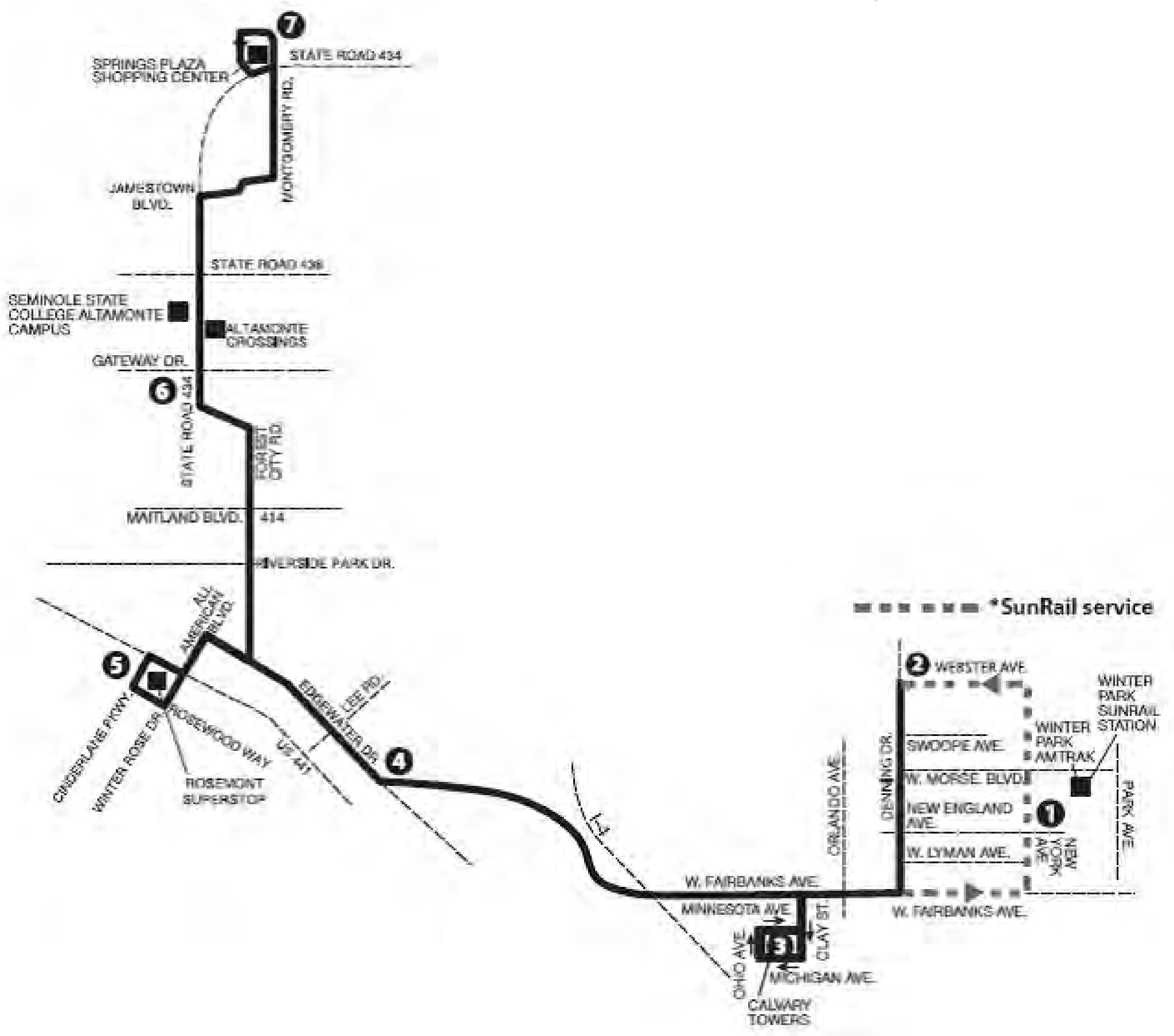
Date:________________________________

Exhibit "A"

DESCRIPTION OF SERVICE AREA

LINK 23 Winter Park/Springs Plaza

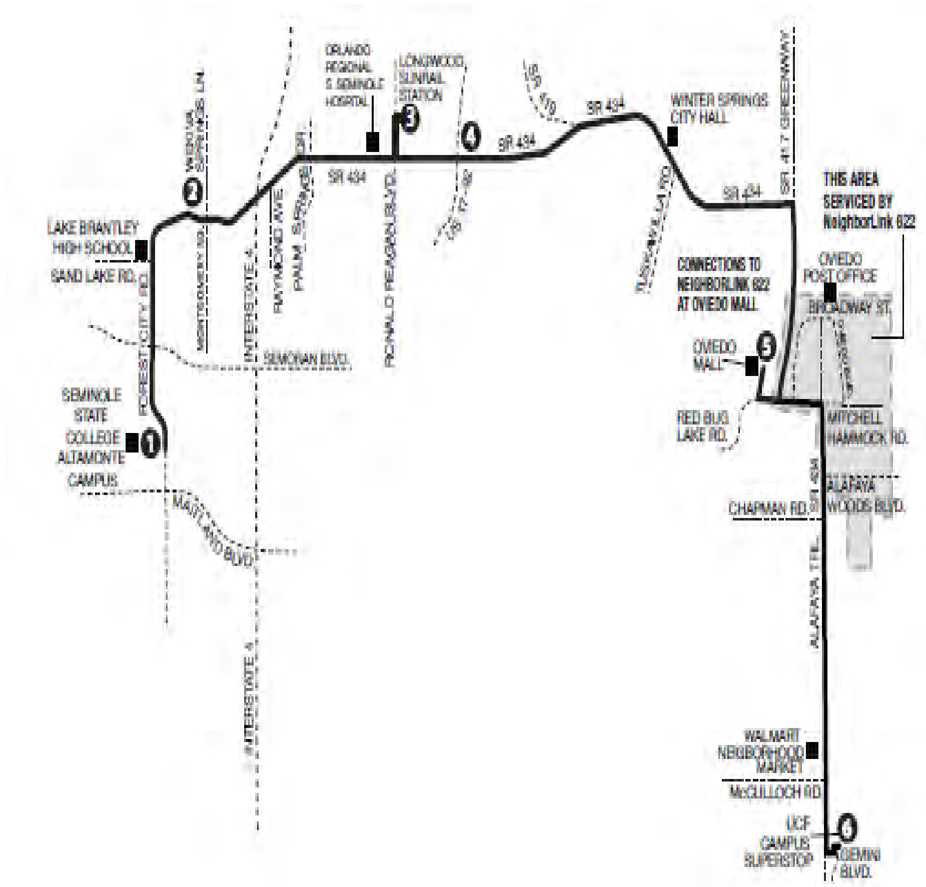
Serving: Winter Park Tech, Rosemont SuperStop, West Town Center Walmart, Springs Plaza Shopping Center, Winter Park SunRail Station and Calvary Towers



23-C06

Link 434 SR 434

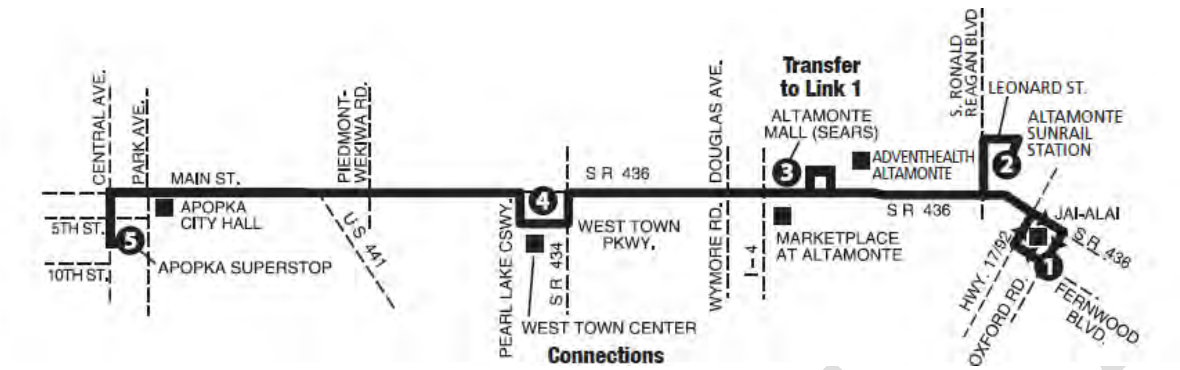
Serving: Seminole State College- Altamonte Campus, Lake Brantley High School, Winter Springs City Hall, South Seminole Hospital, Oviedo Mall, University of Central Florida SuperStop, NeighborLink 622, and Longwood SunRail Station



23-C06

Link 436N SR 436/Fernwood/Apopka

Serving: Apopka, Apopka SuperStop, West Town Center, Altamonte Mall, AdventHealth Altamonte, Fern Park, and Altamonte SunRail Station



Link 436S SR 436/Fernwood/Orlando International Airport

Serving: Fern Park, Casselberry, Azalea Park, and Orlando International Airport

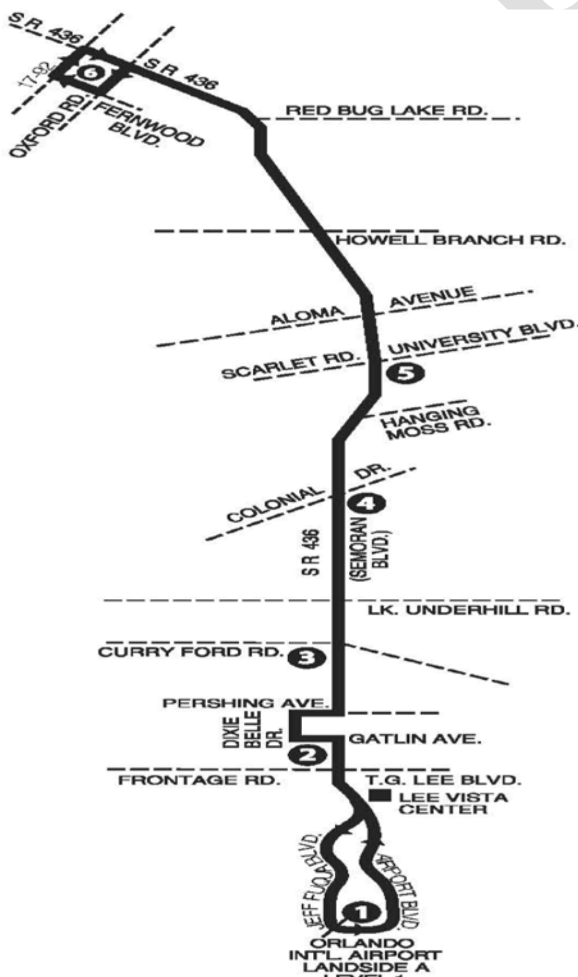


Exhibit "B"

APPROPRIATED AMOUNT

October 2022 through September 2023 $ 120,900

FY2023 Billing Schedule:	
October 2022	$ 30,225
January 2023	$ 30,225
April 2023	$ 30,225
July 2023	$ 30,225
Annual Funding Request from City	**$ 120,900**

Exhibit "C"
Schedule Listing of LYNX Funding Partners

		FY2023 Funding Agreement
Operating Funding		
Orange County	$	59,280,043
Osceola County		10,464,246
Seminole County		10,248,484
Subtotal	$	79,992,773
City of Orlando	$	4,003,006
City of Orlando - LYMMO		2,861,057
FDOT (SunRail Feeder Route)		1,713,747
Reedy Creek		441,445
Altamonte Springs		120,900
City of Sanford		93,000
Subtotal	$	9,233,155
Subtotal Operating Funding	$	89,225,928
Capital Contributions		
Orange County	$	2,833,556
Osceola County		417,228
Seminole County		376,712
Subtotal	$	3,627,496
Total Local Funds	$	92,853,424

23-C05 Service Funding Agreement
by and between
City of Sanford, Florida
and
Central Florida Regional Transportation Authority

THIS SERVICE FUNDING AGREEMENT ("Agreement") is made and entered into by and between **CITY OF SANFORD, FLORIDA**, a charter county and political subdivision of the State of Florida, whose principal address is 300 N. Park Avenue, Sanford, Florida 32771 (hereinafter the "**Funding Partner**"), and the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate created pursuant to Part III, 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 an Interlocal Agreement for Public Transit Services dated as of October 11, 2021 (the "**Prior Fiscal Year Funding Agreement**") pursuant to which the Funding Partner agreed to appropriate funds to LYNX for

fiscal year from October 1, 2021 to September 30, 2022 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, 2022; and

WHEREAS, the Funding Partner has budgeted funds for the fiscal year beginning on October 1, 2022 and ending on September 30, 2023 ("**Fiscal Year**") to support LYNX's Public Transportation services for such fiscal year; and

WHEREAS, LYNX and the Funding Partner wish to acknowledge that appropriate methodology has been used to determine the recommended level of funding by each Funding Partner; 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 only within the Service Area (as hereinafter defined).

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 meetings:

"**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 and Addenda.

"**Appropriated Amount**" means the amount to be paid to LYNX by the Funding Partner for the Current Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder, as set forth in Paragraph 3 hereof.

"**Current Fiscal Year**" means the fiscal year beginning on October 1, 2022 and ending on September 30, 2023

"**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).

"Demand Response Service" or "NeighborLink" means service provided in response to passenger requests made in advance to LYNX, which then dispatches a vehicle to pick up the

passengers and transport them to their destinations or to a fixed-route transfer point within a designated demand response service area.

"**Fiscal Year**" or "**Current Fiscal Year**" means the twelve (12) month period commencing October 1, 2022 and ending the following September 30, 2023.

"**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.

"**FDOT**" means the Florida Department of Transportation.

"**FTA**" means the Federal Transit Association.

"**New Appropriated Amount**" means the amount that is approved or appropriated by the Funding Partner for the Next Fiscal Year in consideration of the Public Transportation to be provided by LYNX hereunder for the Next Fiscal Year, as set forth in Paragraph 3 below.

"**Next Fiscal Year**" means the twelve (12) month period immediately following the Current Fiscal Year, and is the period commencing October 1, 2023 and ending the following September 30, 2024.

"**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) **Current Fiscal Year.**

(i) The Funding Partner agrees to appropriate the amount specified on **Exhibit "B"** attached hereto (the "**Appropriated Amount**") to LYNX for the Fiscal Year for the provision of Public Transportation within the Service Area.

(ii) The Appropriated Amount shall be paid by the Funding Partner to LYNX in twelve (12) equal monthly installments, with each installment being due on the first day of each month. The first installment payment shall be due upon the later of (x) October 1, 2022 or (y) thirty (30) days after the execution date of this Agreement; and any other installment payments which would be due prior to the execution date of this Agreement shall also be paid within thirty (30) days after the execution date of this Agreement.

(iii) In the event that the Appropriated Amount is less than the amount suggested by the Funding Model to fully fund the agreed upon service level in the Funding Partner's Service Area, or in the event that the Appropriated Amount is less than the actual cost to fully fund the agreed upon service level in the Funding Partner's Service Area, LYNX may, at its discretion, (x) utilize reserves to fund the difference and continue to provide the requested service level, or (y) reduce the service level in the Funding Partner's Service Area to a level equivalent to the Appropriated Amount. However, in the event clause (x) is applicable, then the Funding Partner will promptly pay said difference to LYNX within thirty (30) days after the execution date of this Agreement.

(iv) In regard to Paragraph 3(a)(ii), above, for each monthly installment, LYNX will invoice the Funding Partner on a monthly basis and said amount shall be paid within thirty (30) days after the receipt by the Funding Partner of said invoice. However, in regard to any monthly installments that remain unpaid prior to the execution of this Agreement, those unpaid monthly installments (for which LYNX will furnish the Funding Partner invoices) will be paid within thirty (30) days after the execution date of the Agreement.

(b) **Next Fiscal Year.** If, prior to the termination date of this Agreement (as set forth in Paragraph 20 below), the Funding Partner and LYNX have not reached a written agreement setting forth an appropriation to LYNX for the Next Fiscal Year, then, notwithstanding the expiration of this Agreement at the end of the Current Fiscal Year and in order to continue the Public Transportation after said expiration, the Funding Partner shall continue to pay LYNX for the Next Fiscal Year the amount set forth below:

(i) The amount to be paid shall be the Appropriated Amount for the Current Fiscal Year. This Appropriated Amount for the Current Fiscal Year (the "**Post-Termination Payment**") shall be paid as provided herein.

(ii) LYNX will prepare and submit invoices for the Post Termination Payments and the Funding Partner will make such Post-Termination Payments within thirty (30) days after its receipt of such invoices from LYNX.

(iii) The Post Termination Payment shall be paid in equal monthly installments due on the first day of each month commencing October 1, 2023 until the earliest to occur of the following: (x) LYNX and the Funding Partner reach a written agreement setting forth a different appropriation for the Next Fiscal Year; (y) one hundred twenty (120) days following the 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 receives from LYNX the Public Transportation services provided herein; or (z) the date that LYNX actually discontinues the Public Transportation services to the Funding Partner, at which time this Agreement and specifically the provisions of this Subparagraph 3(b) will no longer be applicable. 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. If this Subparagraph 3(b) is applicable, the parties will reconcile the difference between the amount that was paid by the Funding Partner and the amount that has been agreed upon for the Next Fiscal Year in the first month following the earliest of the occurrences set forth above.

(iv) If a written agreement for the Next Fiscal Year is not entered into between LYNX and the Funding Partner by November 30 of the Next Fiscal Year, then, in that event, LYNX will undertake the necessary procedure for the discontinuation of the service which process takes approximately one hundred and twenty (120) days. If a new Funding Agreement for the Next Fiscal Year is not entered into by January 31 of the Next Fiscal Year, then LYNX may discontinue the service in accordance with its policies and the Funding Partner will in any event pay for any service provided for the Next Fiscal Year, including any service that may be provided of necessity by LYNX after January 31 in accordance with its procedures.

(c) 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 two percent (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.

To the extent that there is any increase or decrease of Fixed-Route Service hours greater than two percent (2%) (which would require approval of the Funding Partner), then, in that case, there will be a corresponding increase or decrease in the Appropriated Amount to be paid to LYNX by the Funding Partner from and after said increase or decrease is put into effect.

(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 Office of Regional Mobility 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, Demand Response 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 are plus or minus 10% and 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) Funding Model Information. Attached hereto as **Exhibit "C"** and is a schedule listing involving the following:

(A) All of LYNX's funding partners;

(B) The amount of funding required of each funding partner by the Funding Model for the Current Fiscal Year; and

(C) The amount each funding partner actually budgeted for the Current Fiscal Year to contribute for the services contemplated in the LYNX Funding Model.

(D) LYNX shall provide quarterly updates to **Exhibit "C"** by listing the amount each funding partner has paid to LYNX to date.

(viii) The amount of fund balance allocated to reserves.

(ix) 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. In the event the Funding Partner is the Breaching Party, the Funding Partner will nonetheless continue to pay to LYNX for any fixed route service furnished by LYNX up to the actual date that LYNX terminates said fixed route service, taking into account the policies and procedures to be followed by LYNX to terminate bus service generally (but not to exceed one hundred twenty (120) days).

(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 one hundred twenty (120) days receipt of written notice of termination from the party desiring to terminate this Agreement or such later date as specified in the notice.

The provisions of this Paragraph 7 are further subject to the provisions of Subparagraph 3(c) above as to the rights of the parties to terminate this Agreement after the end of any fiscal year as provided in said Paragraph 3(c).

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.** If LYNX has questions regarding the application of Chapter 119, Florida Statues, to LYNX's duty to provide public records relating to this agreement, contact the funding partner's custodian of public records at**:**

City of Sanford
City Clerk's Office
300 N. Park Avenue
Sanford, Florida 32771
407-688-5014

LYNX understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If LYNX will act on behalf of the Funding Partner, as provided under section 119.011(2), Florida Statutes, LYNX, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

(a) Keep and maintain public records required by the Funding Partner to perform the service.

(b) Upon request from the Funding Partner's custodian of public records, provide the Funding Partner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if LYNX does not transfer the records to the Funding Partner.

(d) Subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, upon completion of the contract, transfer, at no cost, to the Funding Partner all public records in possession of the LYNX or keep and maintain public records required by the Funding Partner to perform the service. If LYNX transfers all public records to the Funding Partner upon completion of the contract, LYNX shall, subject to LYNX's obligations under the Public Records Act and the records retention schedules promulgated thereunder, destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LYNX keeps and maintains public records upon completion of the contract, LYNX shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Funding Partner, upon request from the Funding Partner's custodian of public records, in a format that is compatible with the information technology systems of the Funding Partner.

(e) If LYNX does not comply with a public records request, the Funding Partner shall enforce the contract provisions in accordance with the Agreement.

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. **Compliance with FTA/FDOT Requirements**. The provisions of this Agreement, and the Public Transportation to be provided by LYNX hereunder, is subject at all times to the applicable statutes and rules and regulations of all applicable governmental authorities, including those of the FTA and FDOT. In the event any such statutes or rules or regulations would require a substantial and material change to this Agreement, then the parties will immediately meet to review and make acceptable adjustments to this Agreement so as to comply with such statutes and rules and regulations.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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 Sanford
300 N. Park Avenue
Sanford, Florida 32771
Attn: Norton N. Bonaparte, Jr., City Manager

As to LYNX: Central Florida Regional Transportation Authority
455 North Garland Avenue
Orlando, Florida 32801-1518
Attn: Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer

With copy to: Central Florida Regional Transportation Authority
455 North Garland Avenue
Orlando, Florida 32801-1518
Attn: Leonard Antmann, Chief Financial Officer

With a copy to: Central Florida Regional Transportation Authority
455 North Garland Avenue
Orlando, Florida 32801-1518
Attn: Carrie L. Sarver, Esq., B.C.S., Senior In-House Counsel

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

20. **Effective Date.** The effective date of this Agreement shall be October 1, 2022. Unless terminated earlier in accordance with Paragraph 7 of this Agreement, this Agreement will terminate on September 30, 2023, except for the provisions of this Agreement which by their terms survive the termination of this Agreement.

21. **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.

22. **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.

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 (NA) 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

ATTEST:

By: ______________________________
City Clerk

For the use and reliance of City of Sanford only. Approved as to form and legal sufficiency.

____
City Attorney

FUNDING PARTNER:

CITY OF SANFORD, FLORIDA

By: ______________________________
Art Woodruff, Mayor

Date: ______________________________

SIGNATURE PAGE FOR LYNX

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By:__________________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: ________________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ______________________________

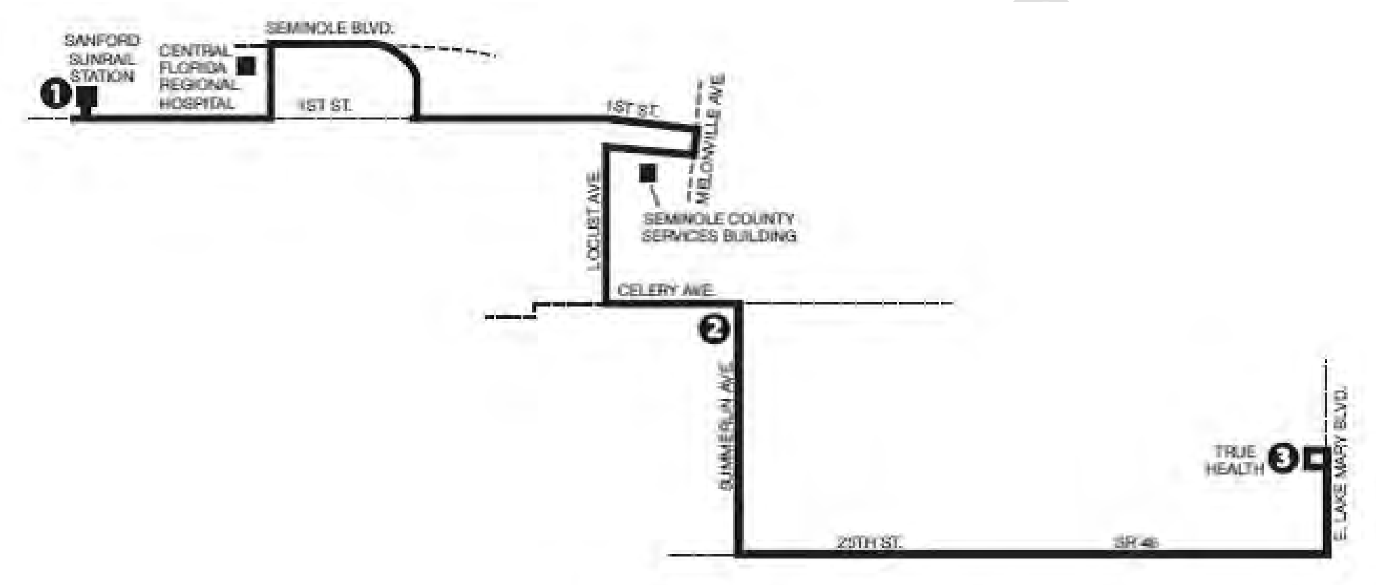
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel

Date:________________________________

Exhibit "A"

DESCRIPTION OF SERVICE AREA

LINK 46 East **E. First St./Downtown Sanford**
Serving: Downtown Sanford, Central Florida Regional Hospital, Seminole County Services Building, True Health, Sanford SunRail Station, and NeighborLink 651



LINK 46 West **W. SR 46/Seminole Towne Center**
Serving: Seminole Towne Center, Walmart Rinehart Road, Super Target Rinehart Road, Sanford SunRail Station and NeighborLink 651

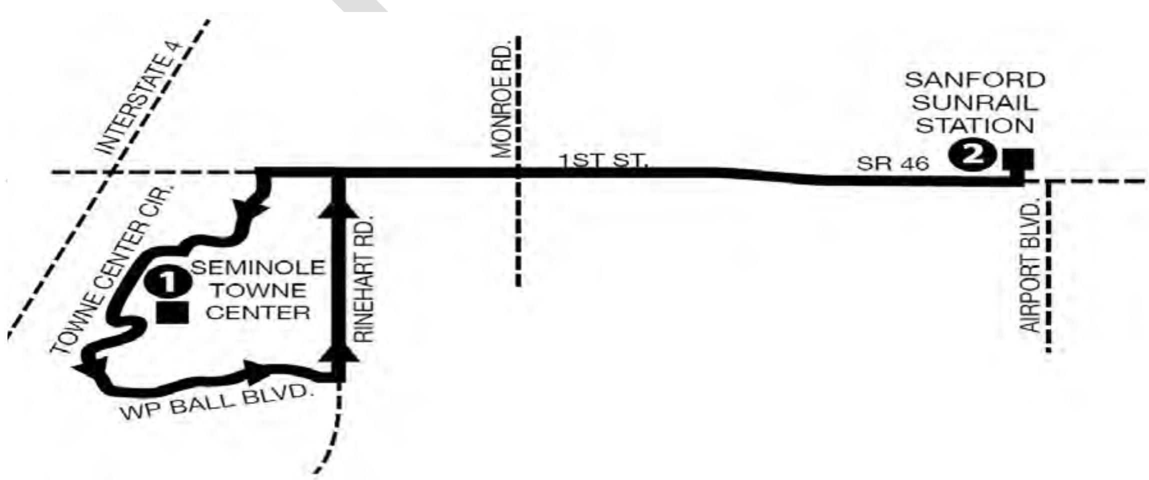


Exhibit "B"

APPROPRIATED AMOUNT

October 2022 through September 2023 $ 93,000

FY202 Billing Schedule:	
October 2022	$ 7,750
November 2022	$ 7,750
December 2022	$ 7,750
January 2023	$ 7,750
February 2023	$ 7,750
March 2023	$ 7,750
April 2023	$ 7,750
May 2023	$ 7,750
June 2023	$ 7,750
July 2023	$ 7,750
August 2023	$ 7,750
September 2023	$ 7,750
Annual Funding Request from City	**$ 93,000**

Exhibit "C"
Schedule Listing of LYNX Funding Partners

		FY2023 Funding Agreement
Operating Funding		
Orange County	$	59,280,043
Osceola County		10,464,246
Seminole County		10,248,484
Subtotal	$	79,992,773
City of Orlando	$	4,003,006
City of Orlando - LYMMO		2,861,057
FDOT (SunRail Feeder Route)		1,713,747
Reedy Creek		441,445
Altamonte Springs		120,900
City of Sanford		93,000
Subtotal	$	9,233,155
Subtotal Operating Funding	$	89,225,928
Capital Contributions		
Orange County	$	2,833,556
Osceola County		417,228
Seminole County		376,712
Subtotal	$	3,627,496
Total Local Funds	$	92,853,424

Action Agenda Item #6.C.

To: **LYNX Finance & Audit Committee**

From: **Leonard Antmann**
Chief Financial Officer
Michelle Daley
(Technical Contact)

Phone: **407.841.2279 ext: 6125**

Item Name: **Authorization to Enter into the FY2023 Bus Service Agreements**

Date: **9/16/2022**

ACTION REQUESTED:

Staff is requesting the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to execute the following Bus Service Agreements:

- Reedy Creek Improvement District (RCID) in the amount of $441,445 for a period of one (1) year;

- Lake County in the amount of $207,000 for a period of one (1) year;

- City of Kissimmee in the amount of $98,597 for a period of two (2) months and nine (9) days;

- I-Drive Community Redevelopment Area in the amount of $1,516,581 for a period of one (1) year;

BACKGROUND:

Reedy Creek Improvement District: LYNX operates service on Links 56: W. U.S. 192/Magic Kingdom, Link 306: Disney Direct/Poinciana, and Link 350: Destination Parkway/SeaWorld/Disney Express per an agreement with the Reedy Creek Improvement District (RCID). The agreement provides for the daily operation of four (4) evening trips on the Link 56, all service (two trips) on the Link 306, and five (5) evening trips on the Link 350.

Lake County: LYNX operates service on the Link 55: West U.S. 192/Four Corners, which operates along West U.S. 192 between downtown Kissimmee and Four Corners, serving destinations along the U.S. 192 corridor. The agreement with Lake County calls for the operation of morning and afternoon/early evening service on weekends only to the Four Corners area within Lake County, with service operating along U.S. 192, U.S. 27, and terminating at the Four Corners Walmart.

City of Kissimmee: LYNX has operated service on Link 709 Kissimmee. The route provides locally-orientated service to improve connectivity and mobility within downtown Kissimmee. It serves key shopping, employment, and entertainment destinations. Span of service focus is on maintaining connections to SunRail at Kissimmee Intermodal Station.

International Drive:
The agreement will be for bus service for routes specifically serving the I-Drive corridor of the FUNDING PARTNER area. LYNX operates service on Links 8: West Oak Ridge / international drive, Links 37: Pine Hills / Florida Mall, Links 38: Universal Orlando / I-Drive Express, Links 42: International Drive / Orlando International Airport, Links 57: John Young Parkway, Links 111 Sea World/ Orlando International Airport, and Links 350: Destination Parkway / Sea World/ Disney Express.

A copy of the proposed bus service agreement that will be entered into between LYNX and each of the entities for Fiscal Year 2023 is attached. Authorization is requested from the Board for LYNX staff to complete the Bus Service Agreement with each entity including completion of the exhibits and addenda incorporating all edits agreed upon. This will permit the Bus Service Agreements to be executed more quickly after the beginning of LYNX's fiscal year. Non-substantive changes will be permitted to the Bus Service Agreements by way of changes through an Addendum provided that said changes are not materially adverse to LYNX.

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A DBE participation goal is not applicable for this activity.

FISCAL IMPACT:

The FY2023 Proposed Operating Budget includes $2,263,623 for the agreements with Reedy Creek, Lake County, City of Kissimmee and International Drive.

BUS SERVICE AGREEMENT
No. 23-C01

by and between

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a **LYNX**
(LYNX)

and

REEDY CREEK IMPROVEMENT DISTRICT
(RCID)

relating to the
providing of bus service in the Reedy Creek Improvement District Service Area

October 1, 2022

TABLE OF CONTENTS

(The Table of Contents to this Bus Service Agreement is for convenience of reference only and is not intended to define, expand or limit any of the terms and conditions of this Bus Service Agreement)

Schedule of Exhibits and Appendices

BUS SERVICE AGREEMENT

THIS BUS SERVICE AGREEMENT (the "**Agreement**") made and entered as of this 1st day of October 2022, by and between:

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY, a body politic of the State of Florida, d/b/a **LYNX**, 455 North Garland Avenue, Orlando, Florida 32801 (hereinafter referred to as "**LYNX**")

and

REEDY CREEK IMPROVEMENT DISTRICT, a body corporate and politic organized under the laws of the State of Florida, 1900 Hotel Plaza Boulevard, Post Office Box 10170, Lake Buena Vista, Florida 32830 (hereinafter referred to as "**RCID**"). **RCID** and **LYNX** shall sometimes be referred to collectively as the "**Parties.**"

W I T N E S S E T H:

WHEREAS, LYNX provides public transportation in the Central Florida area including, but not limited to, dedicated bus service for the benefit of and use by the public; and

WHEREAS, RCID is the governmental authority having jurisdiction over the lands of the Reedy Creek Improvement District, as generally described and set forth in **Exhibit "A"** attached hereto (the "**Service Area**"); and

WHEREAS, RCID has expressed a need for public transportation service in and to certain portions of the Service Area in order to provide for, among other matters, public transportation in order to facilitate employees, guests and other persons seeking transportation to and from facilities located in the Service Area; and

WHEREAS, the Parties have agreed for LYNX to operate one or more "bus links" and to expand one or more existing "bus links" in the Service Area to provide additional public bus transportation, as shown on **Exhibit "C"** and as graphically depicted on **Appendix 1** thereof, and LYNX is prepared to do so pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises herein contained, the parties hereto do hereby agree as follows:

1. **DEFINITIONS**. For the purposes of this Agreement, the following definitions shall apply under this Agreement, unless the context requires otherwise or another definition is expressly provided in this Agreement:

Agreement	shall mean this Bus Service Agreement, as the same may be amended from time to time.

Bus Service	shall mean the bus service to be provided by LYNX in the Service Area as set forth in this Agreement and on **Exhibit "C."**
Contributions	shall mean, the RCID Contributions.
RCID	shall have the meaning set forth in the preamble to this Agreement.
RCID Contributions	shall mean the contributions to be made by RCID to LYNX for the Bus Service to be paid in the amounts and on the dates set forth in **Exhibit "B"** attached hereto.
FDOT	shall mean the Florida Department of Transportation.
FTA	shall mean the Federal Transit Administration.
LYNX	shall have the meaning set forth in the preamble to this Agreement.
Service Area	shall mean the area, as described and set forth in **Exhibit "A"** attached hereto.
Service Route, **Bus Route** or **Bus Link**	shall mean the bus routes for service to be provided by LYNX as identified and set forth in **Exhibit "C"** attached hereto.
Service Schedule	shall mean the frequency, times and stops for the Bus Service to be provided by LYNX, as set forth and described in Paragraph 4 below.
Term	shall mean the term of this Agreement, as set forth in Paragraph 3 below.

2. **PROVIDING OF BUS SERVICE**. Pursuant to the terms and conditions of this Agreement and in consideration of the Contributions, LYNX agrees to provide the Bus Service in and to the Service Area. In regard to providing said Bus Service, the obligation of LYNX is subject to the following:

(a) Federal, state and local regulations applicable to LYNX including, but not limited to, the rules and regulations promulgated from time to time by FDOT and/or FTA as applicable to LYNX.

(b) All conditions beyond the reasonable control of LYNX including, but not limited to, acts of God, hurricanes, matters of public safety, etc.

(c) The changing transportation needs of RCID to the extent LYNX can reasonably accommodate such needs.

3. **TERM.** This Agreement shall be effective as of October 1, 2022 (the "**Commencement Date**") and shall, except as otherwise set forth herein, continue through September 30, 2023 (the "**Expiration Date**"). The Parties are aware and understand that the number of Bus Routes and the extent of the Bus Service is already in place and that LYNX is claiming no additional compensation for periods prior to the Commencement Date of this Agreement.

4. **SCHEDULE OF BUS SERVICE**. Attached hereto as **Exhibit "C"** is a Schedule showing the bus stops and service times for the Bus Service provided by LYNX pursuant to this Agreement. This Schedule is subject to all of the provisions of this Agreement. This Schedule is not a guarantee but rather reflects the anticipated times, stops and service.

5. **PAYMENT FOR BUS SERVICE.** The Bus Service to be provided by LYNX pursuant to this Agreement is in consideration of RCID paying to LYNX the sum of Four Hundred Forty-One Thousand Four Hundred Forty-Five Dollars ($441,445) payable in two payments of Two Hundred Twenty Thousand Seven Hundred Twenty-Three Dollars ($220,723) upon the effective date of Agreement and of Two Hundred Twenty Thousand Seven Hundred Twenty-Two Dollars ($220,722) on or before September 1, 2023, as set forth in **Exhibit "B"**. No additional fees shall be due from RCID for services provided prior to the Commencement Date of this Agreement.

With respect to any bus fares that may arise from the Bus Service (including any interest, if any, that LYNX may obtain by virtue of any deposits it makes by virtue of any of the fares, interests, etc.) the same may be retained by LYNX and used for its other bus operations and is not required to be used for the Bus Service to be provided under this Agreement.

6. **SECURITY DEPOSIT.** No security deposit is required of RCID under this Agreement.

7. **ACCESS OVER PUBLIC AND PRIVATE PROPERTY**. The Parties understand that with respect to the Bus Routes, most of the Bus Routes to be covered in the Service Area are over roads which are owned and operated by RCID for use by the public. Other roads within the Service Area may be deemed to be "private" such as, for example, roads behind gates, etc. If and to the extent the Bus Route at any time extends over any private property not owned and operated for public use by RCID in the Service Area, RCID shall use commercially reasonable efforts to obtain the consent of such private property owner(s) to provide the Bus Service provided by LYNX from time to time. LYNX acknowledges and agrees that any consent for use of such private roads within its Bus Route may be revoked by RCID or the owner of said private property in their sole and absolute discretion upon twenty-four (24) hours' notice to LYNX and, in such event, LYNX will modify the Bus Service accordingly to exclude the private property.

8. **ADVERTISING.** The parties are aware and understand that LYNX undertakes an advertising program on its buses and that LYNX also does not specifically identify a specific bus on a specific route. From time to time, buses will be taken out of service for maintenance and repair and replacement, and future buses will also be used from time to time to provide the Bus Service. In addition, various rules (including FTA guidelines) provide for random assignment of buses. With this background:

(a) LYNX will be entitled to place on the buses which it uses to provide the Bus Service, advertising from time to time. LYNX will use its best efforts not to place on buses in the Service Area advertising relating to any theme parks in the Orlando area that directly compete with theme parks located within the Reedy Creek Improvement District; however, depending on bus repairs, maintenance, etc. it is possible from time to time that buses in the Bus Service Area may contain said advertising but LYNX will use its best efforts not to utilize said advertising on buses in the Bus Service. Any revenue relating to said bus advertising shall be the sole property of LYNX.

(b) LYNX will have the right in its reasonable discretion as to what buses and the type of the buses that will be used to provide the Bus Service.

The foregoing assignments and other matters regarding the buses in the Bus Service will be subject in all respects to all applicable laws including FTA and FDOT requirements.

9. **INSURANCE**. LYNX shall, together with its execution of this Agreement, provide to RCID either: (i) certificates of insurance evidencing the following coverage maintained by LYNX (a) General Liability insurance, (b) Workers' Compensation insurance, and (c) Employer's Liability insurance; or (ii) an affidavit or certificate of insurance evidencing self-insurance as to such coverage.

10. **INDEMNIFICATION.** Each party agrees to defend, indemnify, and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorneys' fees) arising from the indemnifying party's own negligent acts or omissions, or those negligent acts or omissions of the indemnifying party's officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Each party's indemnification is expressly limited to the amounts set forth in Section 768.28(5), Florida Statutes as amended by the Florida State Legislature. 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 of any kind for the acts, omissions, and/or negligence of the other party, its officers, officials, employees, agents, or contractors.

11. **BOND.** RCID shall not be required to furnish LYNX with any bond or other collateral conditioned for the faithful performance of the duties and due accounting for all monies received by RCID under this Agreement.

12. **NON-ASSIGNABILITY.** This Agreement is not assignable by either Party without the prior written consent of the other Party.

13. **RELATIONSHIP OF PARTIES.** The Parties are aware and agree that the relationship between LYNX and RCID under this Agreement shall be that of an independent contractor and not an agent.

14. **NO THIRD PARTY BENEFICIARY; PUBLIC RIGHTS.** This Agreement is

solely between the parties hereto and no entity, person or persons not a party hereto shall have any rights or privileges whatsoever either as a third party beneficiary or otherwise. Further, nothing in this Agreement shall create or be construed to create any rights in and/or for the benefit of the general public related to the subject matter herein.

15. **NOTICE.** Any notice permitted to be given to either party under this Agreement shall be in writing and shall be deemed to be given (i) in the case of delivery, when delivered to the other party at the address set forth in the preamble to this Agreement, (ii) in the case of mailing, 3 days after said notice has been deposited, postage pre-paid, in the United States mail and sent by certified or return receipt requested to the other party at the address set forth in the preamble to this Agreement and (iii) in all other cases when such notice is actually received by the party to whom it has been sent. Notices shall be sent to the following:

As to LYNX:	Tiffany Homler Hawkins Interim Chief Executive Officer & Chief Administrative Officer Central Florida Regional Transportation Authority d/b/a LYNX 455 North Garland Avenue Orlando, Florida 32801 Telephone: (407) 254-6064 Telecopy: (407) 254-6137
with a copy to:	Leonard Antmann Chief Financial Officer Central Florida Regional Transportation Authority d/b/a LYNX 455 North Garland Avenue Orlando, Florida 32801 Telephone: (407) 254-6125 Telecopy: (407) 254-6138
As to RCID:	John Classe, District Administrator Reedy Creek Improvement District 1900 Hotel Plaza Boulevard Lake Buena Vista, Florida 32830 Telephone: (407) 828-3548 Telephone: (407) 934-7480 Telecopy: (407) 934-6200

Either party may change the persons and/or address to which any notices are to be given by so notifying the other parties to this Agreement as provided in this paragraph.

16. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. ANY LEGAL PROCEEDING OF ANY NATURE BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY TO ENFORCE ANY RIGHT OR OBLIGATION UNDER THIS AGREEMENT, OR ARISING OUT OF ANY MATTER

PERTAINING TO THIS AGREEMENT, SHALL BE EXCLUSIVELY SUBMITTED FOR TRIAL WITHOUT JURY BEFORE THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA; OR IF THE CIRCUIT COURT DOES NOT HAVE JURISDICTION, THEN EXCLUSIVELY BEFORE THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA (ORLANDO DIVISION); OR IF NEITHER OF SUCH COURTS SHALL HAVE JURISDICTION, THEN EXCLUSIVELY BEFORE ANY OTHER COURT SITTING IN ORANGE COUNTY, FLORIDA, HAVING SUBJECT MATTER JURISDICTION. THE PARTIES CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT AND AGREE TO ACCEPT SERVICE OF PROCESS OUTSIDE THE STATE OF FLORIDA IN ANY MATTER TO BE SUBMITTED TO ANY SUCH COURT PURSUANT HERETO AND EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY REGARDING ANY SUCH ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

In the event either party employs an attorney or brings an action against the other party arising out of the terms of this Agreement, the prevailing party (whether such prevailing party has been awarded a money judgment or not) shall receive from the non-prevailing party (and the non-prevailing party shall be obligated to pay) the prevailing party’s reasonable legal fees and expenses (including, without limitation, the fees and expenses of experts and para-professionals), whether such fees and expenses are incurred before, during or after any trial, re-trial, re-hearing, mediation or arbitration, administrative proceedings, appeals or bankruptcy or insolvency proceedings, and irrespective of whether the prevailing party would have been entitled to such fees and expenses under applicable law in the absence of this provision. Without limiting the generality of the foregoing, the term "expenses" shall include expert witness fees, bonds, filing fees, administrative fees, transcription fees, depositions or proceedings, costs of discovery and travel costs. The term "prevailing party" as used in this provision shall mean that party whose positions substantially prevail in such action or proceeding, and any action or proceeding brought by any other party against the other as contemplated in this provision may include a plea or request for judicial determination of the "prevailing party" within the meaning of this provision. In the event no party substantially prevails in its positions, the court may rule that no party has so substantially prevailed, in which event each party shall be responsible for their own fees and expenses in connection therewith.

17. **MISCELLANEOUS CLAUSES**.

(a) **Sovereign Immunity**. Nothing contained in this Agreement, the relationship between the Parties hereto, the providing of the Bus Service, or otherwise shall in any way whatsoever constitute any waiver by either LYNX and/or RCID of their rights to invoke sovereign immunity as a governmental entity.

(b) **Force Majeure**. The rights and obligations and duties of the Parties hereunder (other than the payment of money) shall be subject to any causes beyond their reasonable control including, but not limited to, Acts of God, hurricanes, storms, and government regulations and directives as applicable.

(c) **Time of Essence**. The Parties recognize that time is of the essence in the performance of the provisions of this Agreement.

(d) **Legal Obligations**. This Agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

(e) **Public Records; E-Verification**. The Parties hereto warrant compliance with the provisions of (i) Chapter 119, F.S. (with regard to its/their respective duty(ies) to provide public records relating to this Agreement), and (ii) all federal immigration laws and regulations that relate to their employees. The Parties acknowledge and agree that LYNX and RCID are public employers that are subject to the E-Verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of F.S. Sec. 448.095 apply to this Agreement. Notwithstanding anything to the contrary contained herein, if either RCID or LYNX has a good faith belief that the other has knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the party with such good faith belief shall terminate this Agreement. The party violating this paragraph shall be liable for any additional costs incurred by the other party as a result of the termination of this Agreement based on said party's failure to comply with the E-Verify requirements referenced herein.

(f) **No Waiver**. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party or parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all parties.

(g) **Benefits of Service**. The RCID monies to be paid by RCID to LYNX pursuant to Paragraph 5 hereof, are net, and shall not be reduced based upon any other funding or benefits that LYNX may receive including, but not limited to, any funding that LYNX receives from the FTA as a part of its overall ridership total.

(h) **No Oral Modification**. The Parties agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

(i) **Severability**. If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable under applicable present or future laws by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable. In lieu of each clause or provision of this Agreement which is invalid, illegal or unenforceable, there shall be added as a part of this Agreement a clause or provision as nearly identical as may be possible and as may be valid, legal and enforceable.

(j) **Counterparts**. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement, to produce or account for more than one (1) of such counterparts. All counterparts taken together shall be deemed to be one and the same instrument. The delivery of an executed counterpart of a signature page to this Agreement by facsimile, e-mail or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(k) **Adjustment of Bus Routes.** The Parties are aware and understand that with respect to any adjustment or modification of Bus Service, LYNX will be required to follow State and Federal guidelines relating to adjustments and modification of Bus Service. This will generally require a minimum of one hundred twenty (120) days in order to provide various required public notices.

(l) **Default/Notice/Procedure to Resolve Disputes**. The Parties understand and are aware that this Agreement is between two entities who mutually desire for the beneficial providing of the Bus Service under this Agreement and wish to avoid any default or misunderstanding. Thus, in the event one Party hereto believes that the other Party is in default under this Agreement, the other Party through a senior representative shall contact a senior representative of the other Party in an effort to discuss and resolve any alleged default or nonperformance. Failing such resolution, said Party will then be required to give actual written notice to the other Party of said alleged default before said Party may exercise any of the rights available to it under this Agreement. With this background, RCID is aware and specifically understands that the scope and quantity of the Bus Service being made available by it is based upon the amount and it receiving the Contributions from time to time. Thus, for example, if RCID should fail to pay the requisite RCID Contributions, LYNX could seek to enforce that payment but, at its option, could also reduce in its discretion the bus service specifically within the Service Area.

(m) **Service Within and Outside the Service Area**. The Bus Service to be provided by LYNX under this Agreement covers various Bus Routes that are located both within and outside the Service Area, as more particularly set forth in **Exhibit "C."** Thus, the Contributions may be used for all of said Bus Service.

18. **BOARD APPROVAL**. This Agreement is subject to the approval by the RCID Board of Supervisors and the LYNX Board of Directors.

19. **COMPLETE AGREEMENT.** This Agreement constitutes the complete agreement between the Parties hereto with respect to the management and distribution of the services contemplated herein and it may not be amended, changed or modified, except by a writing signed by the party to be charged by said amendment, change or modification.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties have hereunto executed this Bus Service Agreement the day and year first above written.

<u>LYNX</u>*:*
CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By: ____________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: ____________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ______________________________
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel

Date:______________________________

[Signatures Continue on Following Page]

IN WITNESS WHEREOF, the parties have hereunto executed this Bus Service Agreement the day and year first above written.

RCID:
REEDY CREEK IMPROVEMENT DISTRICT

By: _______________________________________
Name: John H. Classe, Jr.
Title: District Administrator

Date: _____________________________________

ATTEST:

By: ______________________________
Clerk, Board of Supervisors

EXHIBIT "A"

Sketch of Reedy Creek Improvement District Service Area

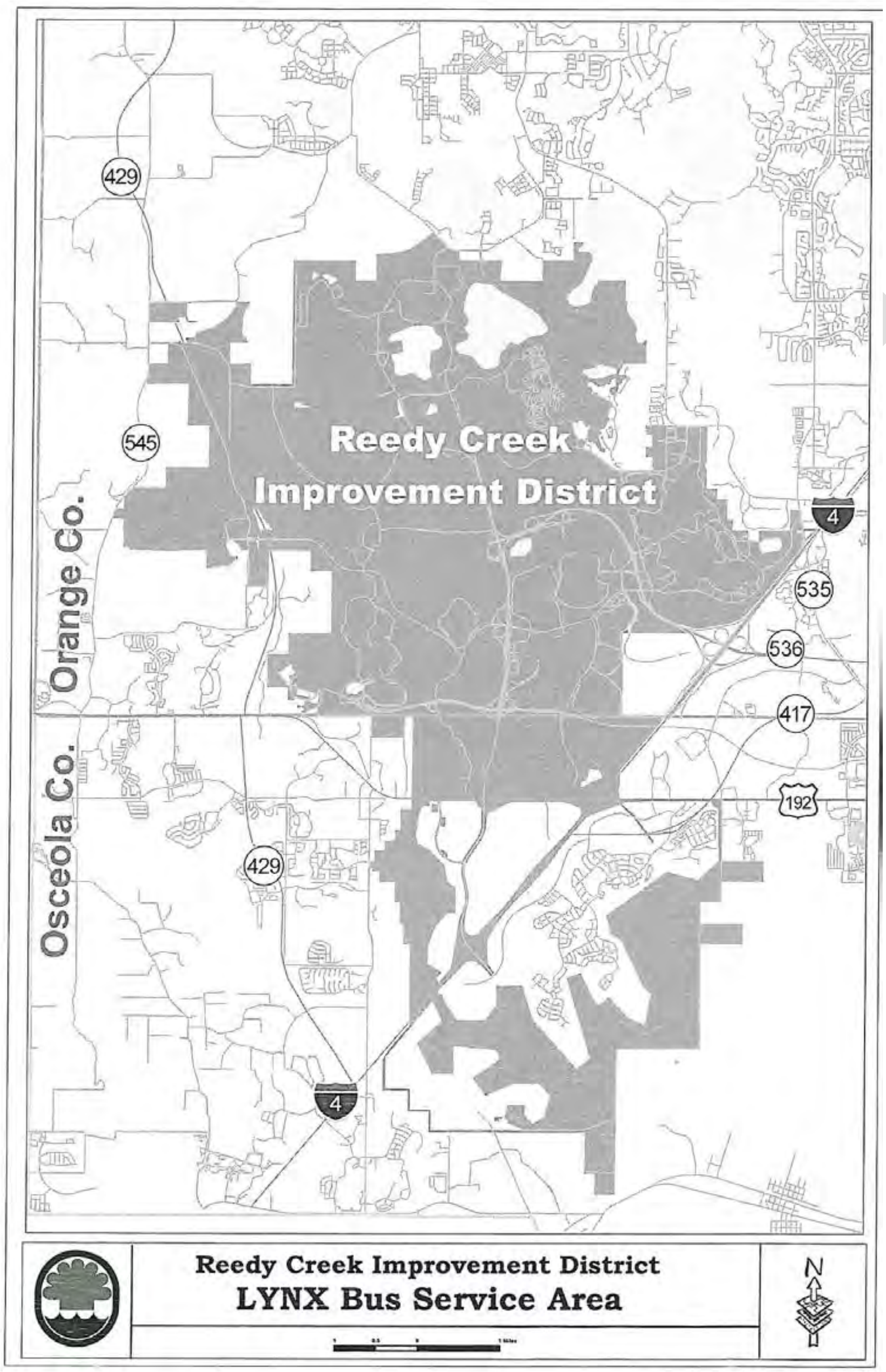


Exhibit "B"

Reedy Creek Improvement District Transit Service Costs

Description of Appropriated Amount
October 1, 20222 through September 30, 2023

Fixed Route Operating Costs

Link Services	Amount
Link 56	$128,071
Link 306	$149,838
Link 350	$163,536
	$441,445

Net Funding Request from County	**$441,445**

FY2023 Billing Schedule

On or before 10/1/2022	$220,723
On or before 9/1/2023	$220,722
Annual Funding Request from County	**$441,445**

EXHIBIT "C"

Description of Lynx Bus Service, Times and Lynx Bus Routes

Effective August 21, 2022

(Refer to Appendix 1 hereof for graphical representation of each Route)

Route	Days of Service	Times of Service	Stops
Link 56: West U.S. 192/ Magic Kingdom	Monday-Sunday & Holidays.	Departs 6:18 AM – 11:10 PM approximately every half hour daily from Disney University (6:47 AM – 11:10 PM Saturdays and 6:48 AM – 11:13 PM Sundays)	WDW Transportation and Ticket Center, US 192 & Old Town, US 192 & SR 535, Disney University, Kissimmee Intermodal Facility, Plaza del Sol
Link 306: Disney Direct/ Poinciana	Monday-Sunday & Holidays.	Two (2) trips per day: Morning from 6:17 AM to 7:18 AM (6:22 AM on Sat./Sun.); Evening from 5:17 PM to 6:34 PM (6:20 PM on Sat./Sun.)	Poinciana Walmart, Poinciana SunRail Station, Disney Springs Transfer Center, Hilton Bonnet Creek Resort, and Marriott Orlando Bonnet Creek Resort
Link 350: Destination Pkwy/ SeaWorld/ Disney Express	Monday-Sunday & Holidays.	Departs 5:45 AM – 12:15 AM every half hour daily from Disney Springs Transfer Center	Disney Springs Transfer Center, Palm Parkway, SeaWorld, Destination Parkway Superstop, and LYNX Central Station

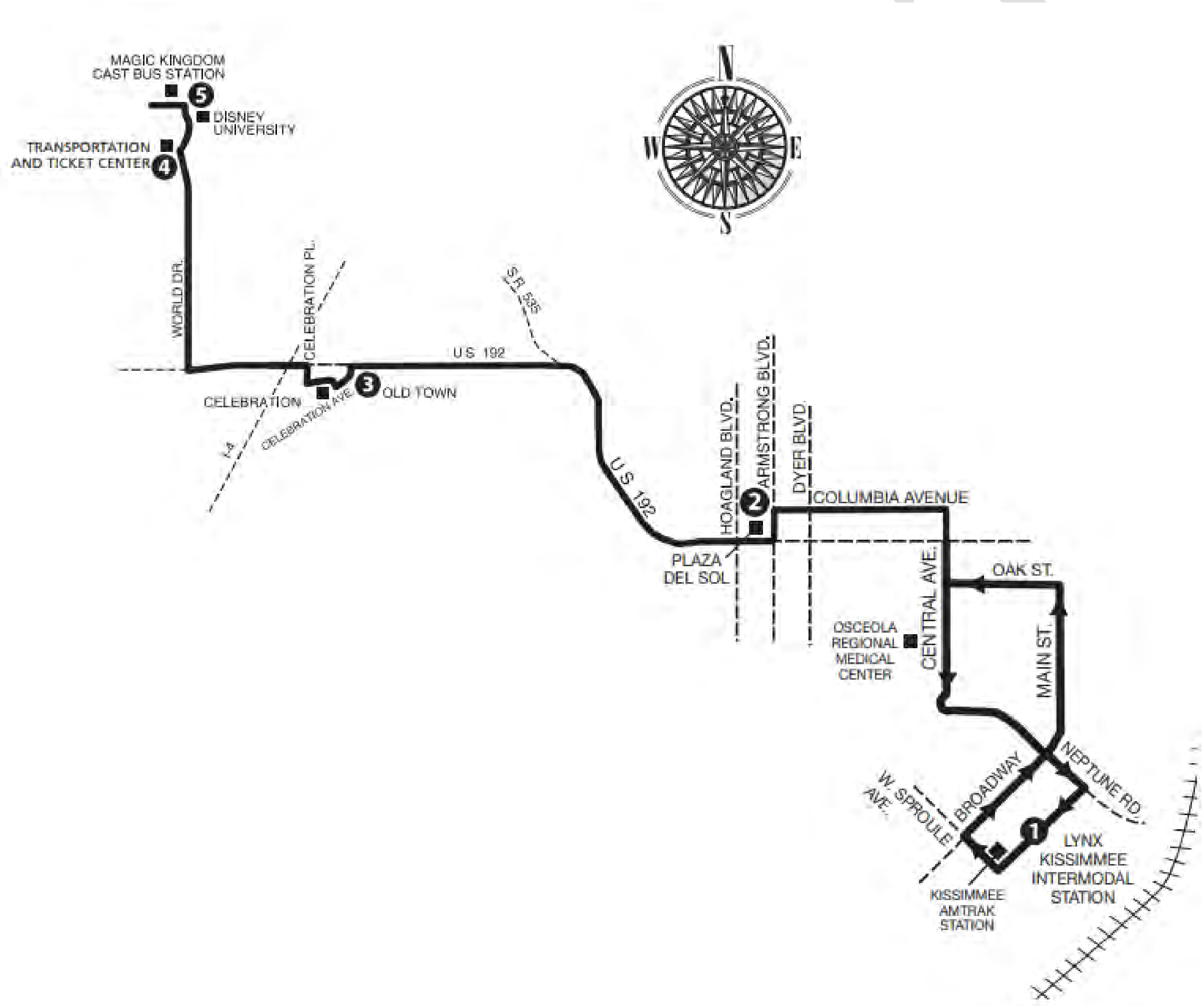
APPENDIX 1
Of Exhibit "B"
Graphical Depictions of Lynx Bus Service Routes

Link 56

W. U.S.192/Magic Kingdom

Monday–Sunday & Holiday service

SERVING:
- Plaza Del Sol
- Old Town
- Celebration
- Walt Disney World Resort Transportation and Ticket Center
- Magic Kingdom Cast Bus Station
- Disney University
- LYNX Kissimmee Intermodal Station/SunRail
- Osceola Regional Medical Center



Service:	Monday-Sunday & Holidays 5:30 AM to 12:05 AM
Frequency:	30 minutes

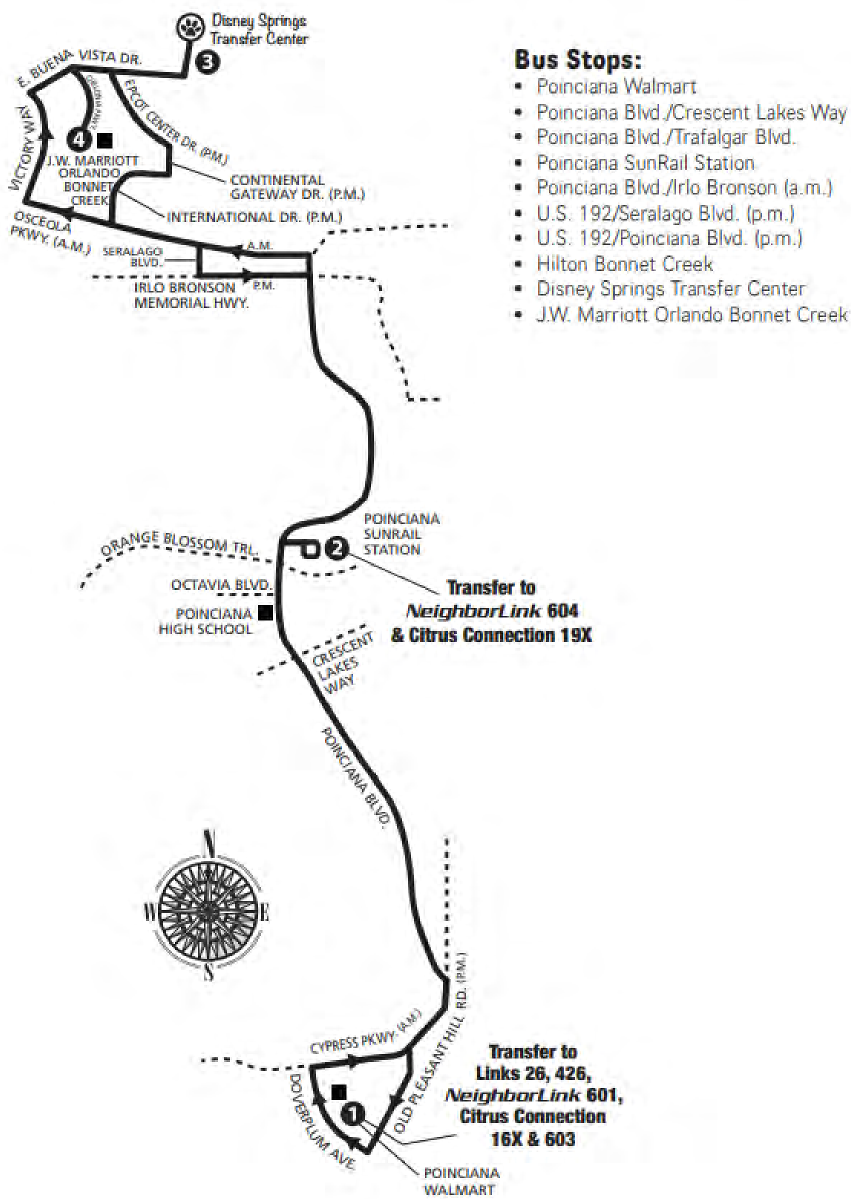
Link 306

Disney Direct

Monday–Sunday & Holiday service

SERVING:

- Poinciana
- Poinciana High School
- Disney Springs Transfer Center
- Hilton Bonnet Creek Resort
- NeighborLink 601
- Citrus Connection 16X,19X, 603
- NeighborLink 604
- Poinciana Walmart
- Poinciana SunRail Station
- J.W. Marriott Orlando
- Bonnet Creek



Service: Monday-Sunday & Holidays

Frequency: One northbound trip to Disney Springs at 6:17 a.m.
One PM southbound trip to Poinciana at 5:17 p.m.

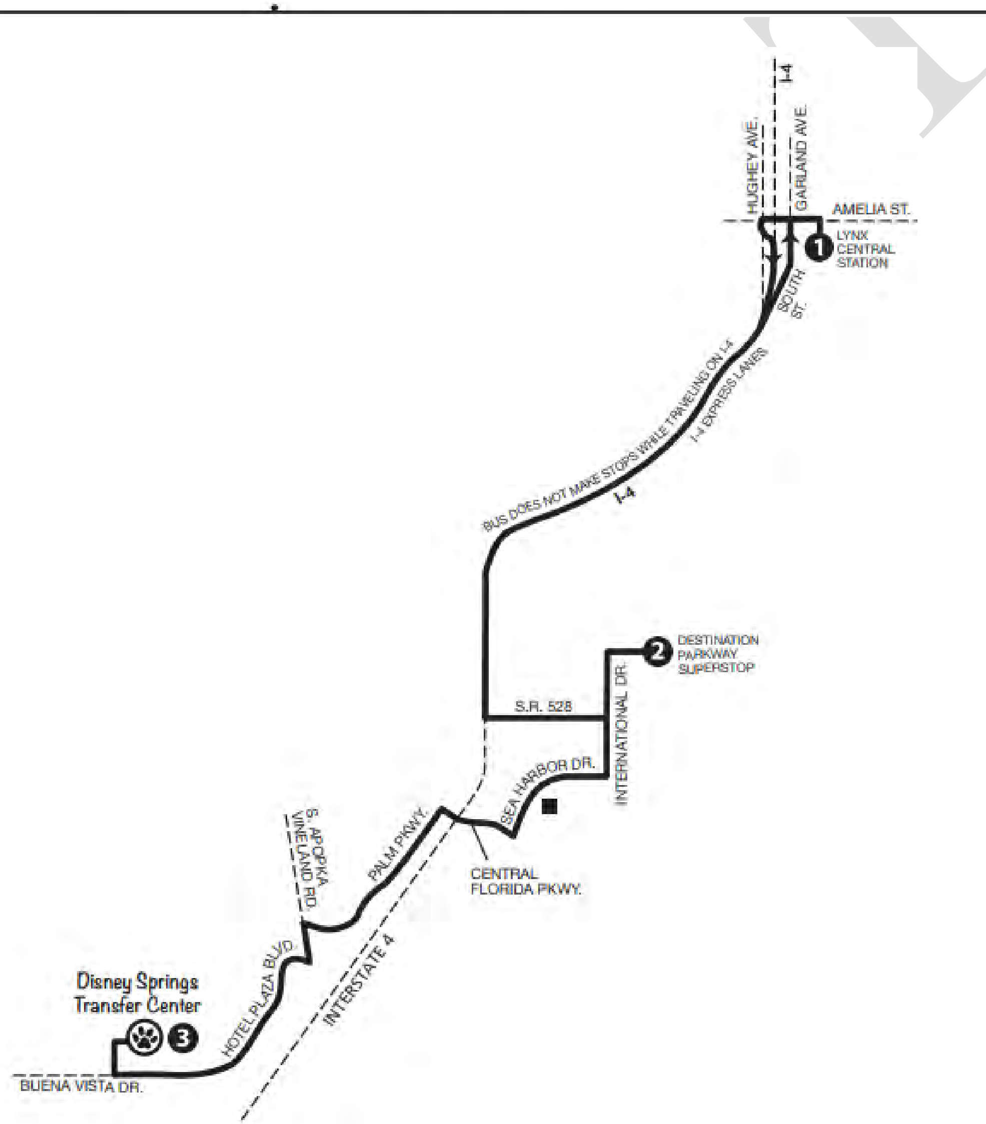
Link 350

Destination Parkway/ SeaWorld/Disney Express

Monday–Sunday & Holiday service

SERVING:

LYNX Central Station
SeaWorld
Disney Springs Transfer Center
Destination Parkway SuperStop
Orange County Convention Center
Downtown Orlando



Service: Monday-Sunday & Holidays
5:15 AM to 12:55 AM

Frequency: 30 minutes

BUS SERVICE AGREEMENT
No. 23-C02

by and between

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX
(LYNX)

and

LAKE COUNTY

October 1, 2022

BUS SERVICE AGREEMENT

THIS BUS SERVICE AGREEMENT (the "**Agreement**") made and entered as of this 1st day of October, 2022, by and between:

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX, a body politic and corporate, created by Part III, Chapter 343, Florida Statutes, (hereinafter referred to as "**LYNX**") whose address is 455 North Garland Avenue, Orlando, Florida 32801

and

LAKE COUNTY, FLORIDA, a political subdivision of the State of Florida, (hereinafter referred to as "**LAKE COUNTY**") whose principal address is 315 West Main Street, Suite 520, Tavares, Florida 32778. **LAKE COUNTY** and **LYNX** shall sometimes each be referred to as a "party" and collectively as the "**parties.**"

W I T N E S S E T H:

WHEREAS, LYNX provides public transportation in the Central Florida area including, but not limited to, dedicated bus service for the benefit of and use by the public; and

WHEREAS, LAKE COUNTY has expressed a need for additional or new public transportation service in and to certain portions of Lake County identified and set forth in **<u>Exhibit "A"</u>** (the "**<u>Service Area</u>**"), attached hereto; and

WHEREAS, the Parties have agreed to LYNX establishing and/or expanding public transportation service in and to the Service Area to provide said additional bus transportation, and LYNX is prepared to do so pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises herein contained, the parties hereto do hereby agree as follows:

1. **<u>DEFINITIONS</u>**. For purposes of this Agreement, the following definitions shall apply, unless the context requires otherwise or another definition is expressly provided in this Agreement:

<u>Agreement</u>	Shall mean this Bus Service Agreement, as the same may be amended from time to time.
<u>Bus Service</u>	Shall mean the revenue bus service to be provided by LYNX in and to the Service Area as set forth in this Agreement.
<u>Cost of Bus Service</u>	Shall mean the actual cost of incurred by LYNX to provide the Bus Service, which for the LYNX fiscal year ending September 30, 2023, will be based on an estimated hourly rate of $93.82 including fuel and administrative costs. The foregoing hourly rate is subject to readjustment for each succeeding fiscal year as provided in paragraph 3 below.
<u>Farebox Revenue</u>	Shall mean the revenue derived from LYNX from passengers utilizing the Bus Service. In the event any such Farebox Revenue is allocated to services provided by LYNX outside of the Service Area, then LYNX may make a reasonable allocation of said revenue so that the term "Farebox Revenue" relates solely to the Farebox Revenue for the Bus Service in the Service Area.
<u>FDOT</u>	Shall mean the Florida Department of Transportation.
<u>FTA</u>	Shall mean the Federal Transit Administration.
<u>LAKE COUNTY</u>	Shall have the meaning set forth in the preamble to this Agreement.
<u>Monthly Cost of Bus Service</u>	Shall mean the actual cost incurred by LYNX (based on the Cost of Bus Service and the actual hours of Bus Service) to provide the Bus Service for each and every month during the term of this Agreement.
<u>Monthly Farebox Revenue</u>	Shall mean the actual Farebox Revenue received from LYNX for the Bus Service during each and every month during the term of this Agreement.
<u>Monthly Payment</u>	Shall mean the payment made to LYNX by LAKE COUNTY at the end of each and every month during the term of this Agreement, as provided in paragraph 6 below.
<u>Net Monthly Cost of Bus Service</u>	Shall mean the net cost to provide the Bus Service on a monthly basis, which for any particular month is equal to the Monthly Cost of Bus Service for that month less the Monthly Farebox Revenue for that same month.
<u>Service Area</u>	Shall have the meaning set forth in the preamble to this Agreement.

Service Schedule Shall mean the frequency, times and stops for the Bus Service to be provided by LYNX, as set forth and described in paragraph 5 below.

2. **PROVIDING OF BUS SERVICE**. Pursuant to the terms and conditions of this Agreement and in consideration of the Payments, LYNX agrees to provide the Bus Service in the Service Area. In regard to providing said Bus Service, the obligation of LYNX is subject to the following:

(a) Federal, state and local regulations applicable to LYNX including, but not limited to, the rules and regulations promulgated from time to time by FDOT and/or FTA as applicable to LYNX;
(b) All conditions beyond the reasonable control of LYNX including but not limited to, Acts of God, hurricanes, matters of public safety, etc.; and

(c) The changing transportation needs of LAKE COUNTY to the extent LYNX can accommodate such needs; and which are either consistent with the terms of the Agreement or, if inconsistent with the terms of the Agreement are part of a contract modification approved in accordance with paragraph 16.

The times set forth in this Agreement and other matters regarding the providing of Bus Service are not guarantees; they are projected times for stops and starts and are subject to best efforts by LYNX, including matters associated with traffic, accidents, etc.

3. **TERM**. This Agreement shall be effective on October 1, 2022 (the "**Commencement Date**") and shall, except as otherwise set forth herein or unless terminated in writing by either party, continue through September 30, 2023 (the "**Expiration Date**"), which is the funding period for providing the Bus Service as set forth in **Exhibit "A"** attached hereto.

No later than six (6) months before the end of the fiscal year of this Agreement (based on a September 30 fiscal year), LAKE COUNTY and LYNX shall meet in good faith to discuss each party's intentions to negotiate an agreement for the continuance of service, as well as to consider any adjustment in the hourly cost of providing the Bus Service as set forth under Cost of Bus Service, to reflect any changes in LYNX's cost of doing so.

4. **TERMINATION.**

a. **Termination at Will**. This Agreement may be terminated by either party upon no less than thirty (30) calendar days' notice, without cause. Said notice shall be delivered in accordance with paragraph 12.

b. **Termination Due to Lack of Funds**. In the event funds from governmental sources relied upon to finance this Agreement become unavailable, LAKE COUNTY or LYNX may terminate this Agreement with no less than five (5) business days' written notice to the other party. Notice shall be delivered in accordance with paragraph 12.

c. **Termination for Breach**. Unless breach is waived by LAKE COUNTY or LYNX in writing, either party shall, in order to terminate this Agreement for breach, give the other party and LAKE COUNTY written notice of the breach. If the breach is not cured within thirty (30) calendar days, the non-breaching party may terminate this Agreement. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Waiver by either party of breach of any provisions of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement, and shall not act as a waiver or estoppel to enforcement of any provision of this Agreement. The provisions herein do not limit the rights of LAKE COUNTY or LYNX to remedies at law or to damages.

5. **SCHEDULE OF BUS SERVICE**. Attached hereto as **Exhibit "A"** is a Schedule showing the proposed times, stops and service for the Bus Service. This Schedule is subject to all of the provisions of this Agreement. This schedule is not a guarantee but rather reflects the anticipated times, stops, and service. During the term of this Agreement, LYNX, after discussion with LAKE COUNTY, may adjust the Schedule to better accommodate the overall Bus Service to be provided under this Agreement. Thus, for example, if a particular Bus Stop provides a safety hazard, then LYNX, in cooperation with LAKE COUNTY, could move that Bus Stop to a safer location.

6. **PAYMENT FOR BUS SERVICE.** The Bus Service to be provided by LYNX pursuant to this Agreement is in consideration of LAKE COUNTY paying to LYNX the Monthly Cost of Bus Service. In that regard, the parties do hereby agree as follows:

a. Within thirty (30) days after the end of each and every month, LYNX shall provide to LAKE COUNTY an invoice in reasonable detail sufficient to show for said month the Monthly Cost of Bus Service, which would show for that month the required payment to be made to LYNX which would be the Monthly Cost for Bus Service to be paid. LAKE COUNTY will make payments on all undisputed invoices in accordance with the Prompt Payment Act of Part VII, Chapter 218, Florida Statutes.

b. For the purpose of invoicing, invoices and related matters will be sent to LAKE COUNTY at the following address:

Lake County Office of Transit Services
PO Box 7800
Tavares, Florida 32778

c. In any event, the obligation of LYNX to provide the Bus Service is expressly contingent upon it receiving and only to the extent it receives the required Payments set forth above.

d. Nothing contained in this Agreement shall obligate LYNX to provide for the Bus Service any other funding. Specifically, LYNX will not be obligated to provide any general funding it receives from any other government agency to the Bus Service. With respect to any bus fares that may arise from the Bus Service (including any interest, if any, that LYNX may obtain by virtue of any deposits if makes by virtue of any of the Payments), those fares, interests, etc. may be retained by LYNX and used for its other bus operations and is not required to be used for the Bus Service to be provided under this Agreement.

e. The anticipated Monthly Cost of Bus Service is set forth on **Exhibit** **"B"** attached hereto.

7. **ADVERTISING**. The parties are aware and understand that LYNX undertakes an advertising program on its buses and that LYNX also does not specifically identify a specific bus on a specific route. From time to time, buses will be taken out of service for maintenance and repair and replacement, and future buses will also be used from time to time to provide the Bus Service. In addition, various rules (including FTA guidelines) provide for random assignment of buses. With this background:

a. LYNX will be entitled to place advertising from time to time on the buses which it uses to provide the Bus Service .

b. LYNX shall have the right in its reasonable discretion as to what buses and the type of the buses that will be used to provide the Bus Service.

The foregoing assignments and other matters regarding the buses in the Bus Service will be subject in all respects to all applicable laws including FTA and FDOT requirements. Any advertising revenue obtained from

LYNX in connection with the Bus Service will be the property of LYNX and will not be deemed to be any "Farebox Revenue."

8. **BOND**. LAKE COUNTY will not be required to furnish LYNX with any bond or other collateral conditioned for the faithful performance of the duties and due accounting for all monies received by LAKE COUNTY under this Agreement.

9. **NON-ASSIGNABILITY**. This Agreement is not assignable by either Party without the prior written consent of the other Party.

10. **RELATIONSHIP OF OTHER PARTIES**. The Parties are aware and agree that the relationship between LYNX and LAKE COUNTY under this Agreement shall be that of an independent contractor and not an agent.

11. **NO THIRD-PARTY BENEFICIARY.** This Agreement is solely between the parties hereto and no person or persons not a party hereto shall have any rights or privileges whatsoever either as a third-party beneficiary or otherwise.

12. **NOTICE.** Any notice permitted to be given to either party under this Agreement shall be in writing and shall be deemed to be given (i) in the case of delivery, when delivered to the other party at the address set forth below, (ii) in the case of mailing, three (3) days after said notice has been deposited, postage pre-paid, in the United States mail and sent by certified or return receipt requested to the other party at the address set forth in the preamble to this Agreement and (iii) in all other cases when such notice is actually received by the party to whom it has been sent. Notices shall be sent to the following:

LYNX:	Leonard Antmann, Chief Financial Officer 455 North Garland Avenue Orlando, Florida 32801
Copy:	Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer 455 North Garland Avenue Orlando, Florida 32801
Copy:	Carrie L. Sarver, B.C.S., Senior In-House Counsel 455 North Garland Avenue Orlando, Florida 32801
LAKE COUNTY:	Lake County Manager Jennifer Barker PO Box 7800 Tavares, Florida 32778
Copy:	Lake County Attorney PO Box 7800 Tavares, Florida 32778

Either party may change the address to which any notices are to be given by so notifying the other parties to this Agreement as provided in this paragraph.

13. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. The parties further agree that the exclusive venue and jurisdiction over any

action arising under this Agreement shall be in the courts of Lake County, Florida. Each party expressly waives any right to a jury trial. Arbitration will not be used as a means for dispute resolution.

14. **MISCELLANEOUS CLAUSES**.

a. **Sovereign Immunity**. Each party hereto is a government agency entitled to sovereign immunity under the laws of the State of Florida. Nothing contained in this Agreement, the relationship between the parties hereto, the providing of the Bus Service, or otherwise shall in any way whatsoever constitute any waiver by LYNX or LAKE COUNTY of its rights to invoke sovereign immunity as a governmental entity.

b. **Force Majeure**. The rights and obligations and duties of the parties hereunder shall be subject to any causes beyond their reasonable control including, but not limited to, Acts of God, hurricanes, storms, and, in the case of LYNX, unforeseen changes to government regulations and directives applicable to it.

c. **Time of Essence**. The parties recognize that time is of the essence in the performance of the provisions of this Agreement provided, however, in regard to the providing of Bus Service, that is subject to the qualifications set forth in this Agreement.

d. **Legal Obligations**. This Agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

e. **No Waiver**. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party or parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all parties.

f. **Benefits of Service**. The Payments to be paid by LAKE COUNTY to LYNX are net, and shall not be reduced based upon any other funding or benefits that LYNX may receive including, but not limited to, any funding that LYNX receives from the FTA as a part of its overall ridership total.

g. **No Oral Modification**. The parties agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

h. **Severability**. If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable.

i. **Counterparts**. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement, to produce or account for more than one (1) of such counterparts.

j. **Adjustment of Bus Routes**. The parties are aware and understand that with respect to any adjustment or modification of Bus Service, LYNX will be required to follow State and Federal guidelines relating to adjustments and modification of Bus Service. This will generally require a minimum of one hundred twenty (120) days in order to provide various required public notices.

k. **Capital Requirements (i.e., Buses).** LYNX has generally planned for adequate buses to provide the Bus Service. If, at any time, LYNX experiences a material shortfall or lack of buses to provide the Bus Service, LYNX will immediately discuss with LAKE COUNTY such situation and how it is to be resolved. The matter will also be brought to the attention of the Board of Directors of LYNX and the Parties will seek to arrive at a solution to provide such additional bus capacity. In doing so, the parties are aware that any solution would not necessarily involve LYNX moving buses from its other public routes. LYNX, through its Board of Directors, will have in its reasonable discretion the ability to deal with such situation.

l. **<u>Default/Notice/Procedure to Resolve Disputes</u>**. This Agreement is between two entities who want the mutual benefit of the provision of the Bus Service under this Agreement and wish to avoid any default or misunderstandings. In the event one party hereto believes that the other party is in default under this Agreement, the non-defaulting party through a senior representative shall contact a senior representative of the defaulting party in an effort to discuss and resolve any alleged default or nonperformance. Failing such resolution, written notice of default will be sent via certified mail to the defaulting party. The defaulting party will have ten (10) days to cure the default or may be considered in breach of this Agreement. The non-defaulting party will then be required to give actual written notice to the defaulting party of default before it exercises any of the rights available to it under this Agreement.

m. **<u>Service Within and Outside the Service Area</u>**. The Bus Service to be provided by LYNX under this Agreement covers Bus Routes that are located within the Service Area, as more particularly set forth in **<u>Exhibit "A."</u>** LYNX is not obligated to provide the Bus Service outside the Service Area, unless otherwise agreed between the parties through an amendment to this Agreement.

n. **<u>Independent Contractor As To Employees Of LYNX</u>.** LYNX is an independent contractor and retains the right to exercise full control and supervision over its employees and their compensation and discharge. LYNX will be solely responsible for all matters relating to payment of its employees, including but not limited to the withholding and payment of employee taxes, insurance contributions, placement of insurance and pension coverages and the like.

15. **<u>BOARD APPROVAL.</u>** This Agreement is subject to the approval by the parties' respective Boards.

16. **<u>COMPLETE AGREEMENT.</u>** This Agreement constitutes the complete agreement between the parties hereto with respect to the management and distribution of the services contemplated herein and it may not be amended, changed or modified except by a writing signed by the party to be charged by said amendment, change or modification subject to the following:

a. Modifications that are anticipated to result in no increase to LYNX operational cost per revenue hour (see Cost of Bus Service) require only the concurrence of the LYNX's Executive Director and the approval of the LAKE COUNTY Manager.

b. Modifications that are anticipated to result in an increase to LYNX operational cost per revenue hour (see Cost of Bus Service) require the approval of the LYNX's Board of Directors and the LAKE COUNTY Board of County Commissioners.

17. **<u>Reporting.</u>**

a. LYNX will provide Lake County operational service data on a monthly basis for the purpose of operations and management analysis. These reports will include (1) revenue hours, (2) revenue miles, and (3) unlinked passengers' trips for LAKE COUNTY portion of LYNX Route 55.

b. Accident Reports. Accident reports must be delivered or transmitted to LAKE COUNTY within 24 hours of the occurrence. In the event of critical accidents/incidents that involve fatalities, serious injuries, felonies, or are likely to garner media attention, LAKE COUNTY staff will be notified immediately with specific details. If necessary, LYNX must conduct a DOT Post-Accident Test.

c. Complaint/Commendation Report. LYNX will maintain a ledger of all complaints received directly be LYNX (through drivers, dispatch, or other staff) from riders and any members of the public in monthly reports to be submitted to LAKE COUNTY upon request at regular intervals. The report must include at a minimum the date, time, route, direction, weather and operating conditions, location of complaint, whether it is a service or facility (i.e. bus stop, shelter, etc.).

18. **PUBLIC RECORDS.**

a. LYNX understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If LYNX will act on behalf of LAKE COUNTY, as provided under section 119.011(2), Florida Statutes, LYNX, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

i. Keep and maintain public records required by LAKE COUNTY to perform the service.

ii. Upon request from LAKE COUNTY'S custodian of public records, provide LAKE COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.

iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if LYNX does not transfer the records to LAKE COUNTY.

iv. Upon completion of the contract, transfer, at no cost, to LAKE COUNTY all public records in possession of LYNX or keep and maintain public records required by LAKE COUNTY to perform the service. If LYNX transfers all public records to LAKE COUNTY upon completion of the contract, LYNX shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LYNX keeps and maintains public records upon completion of the contract, LYNX shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to LAKE COUNTY, upon request from LAKE COUNTY'S custodian of public records, in a format that is compatible with the information technology systems of LAKE COUNTY.

v. If LYNX does not comply with a public records request, LAKE COUNTY shall enforce the contract provisions in accordance with the Agreement.

vi. Failure to comply with this subsection will be deemed a breach of the contract and enforceable as set forth in Section 119.0701, Florida Statutes.

vii. Unless otherwise provided, LYNX shall maintain substantiating records as required by the State of Florida, General Records Schedule GS1-SL ("Schedule") for State and Local Government Agencies. If LYNX receives notification of a dispute or the commencement of litigation regarding this Agreement within the time specified in the Schedule, LYNX shall continue to maintain all service records until final resolution of the dispute or litigation.

b. IF LYNX HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO LYNX'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT

LAKE COUNTY OFFICE OF TRANSIT SERVICES
Jill Brown
2440 Highway 441/27
Fruitland Park, Florida 34731
352-901-0606
jmbrown@lakecountyfl.gov

19. **INSURANCE.**

LYNX shall, together with its execution of this Agreement, provide either: (i) certificates of insurance evidencing the following coverage maintained by LYNX (a) General Liability insurance, (b) Workers' Compensation insurance, and (c) Employer's Liability insurance; or (ii) an affidavit or certificate of insurance evidencing self-insurance as to such coverage, in such form and amounts acceptable to LAKE COUNTY.

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[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto executed this Bus Service Agreement the day and year first above written.

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By: ______________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: _____________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ______________________________
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel

Date:______________________________

BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, FLORIDA

____
Sean M. Parks, Chairman

This ______ day of __________________ 2022.

ATTEST:

____
Gary J. Cooney, Clerk
Board of County Commissioners of Lake County, Florida

Approved as to Form and Legality:

____
Melanie Marsh, County Attorney

23-C02

EXHIBIT “A”

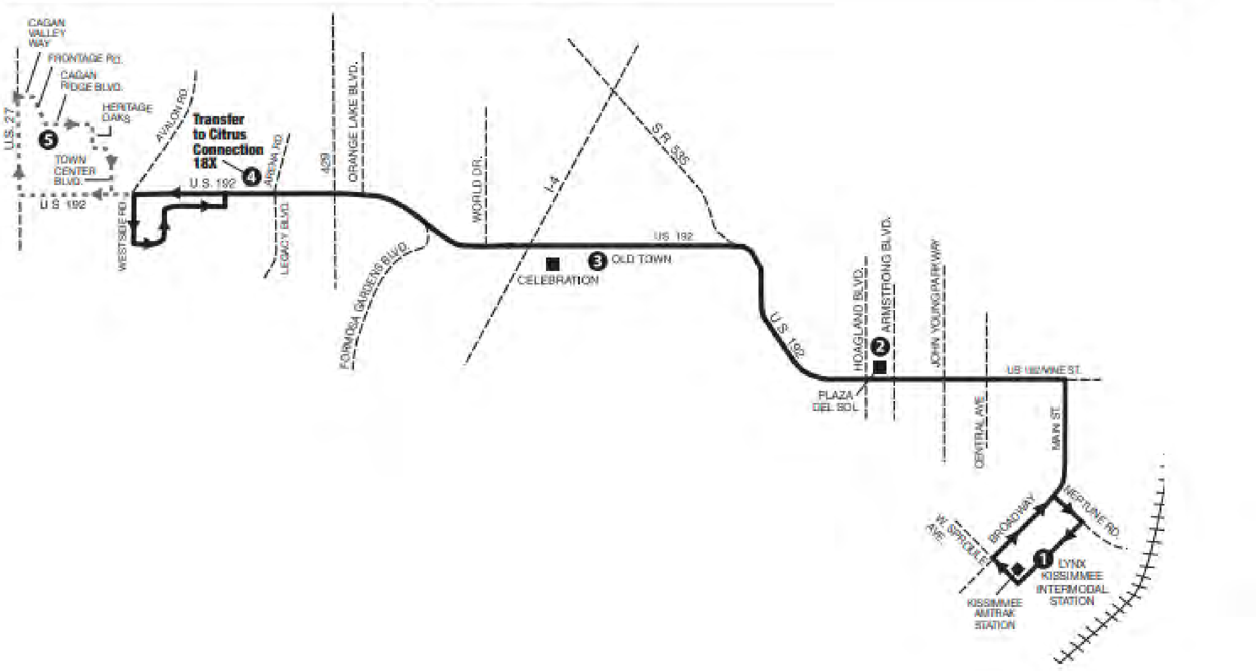
Link 55

W. U.S. 192/Four Corners

Monday–Sunday & Holiday service

SERVING:

- LYNX Kissimmee Intermodal Station/SunRail
- Old Town
- Celebration
- Orange Lake
- Four Corners Walmart
- Plaza Del Sol
- Citrus Connection 18X



Description of Bus Route(s)

Kissimmee Intermodal Station, W. Sproule Ave., Broadway, Main St., U.S. 192, Westside Rd. (peak and evening service extended to Cagan Crossing via U.S. 192, U.S. 27, Cagan Valley Way, Cagan Ridge Blvd., Heritage Oaks, Town Center Blvd. As of December 11, 2022, service to Cagan Crossing will be on Saturday & Sunday/Holidays only. Weekday service will end at U.S. 192 & Legacy Blvd.

“Exhibit B”

Lake County Transit Service Costs

Description of Appropriated Amount
October 1, 2022 through September 30, 2023

Fixed Route Operating Costs (Oct 1st - Dec 10th)

Link Services	Amount
Link 55	$92,969

Fixed Route Operating Costs (Dec 11th - Sep 30)

Link Services	Amount
Link 55	$114,031

Net Funding Request from County **$207,000**

FY2023 Billing Schedule

October-22	$40,593
November-22	$39,281
December 1-10	$13,095
December 11-31	$7,864
January-23	$11,796
February-23	$10,486
March-23	$10,486
April - 23	$13,107
May-23	$11,796
June-23	$10,486
July-23	$14,417
August 1-26	$10,486
September-23	$13,107

Annual Funding Request from County **$207,000**

BUS SERVICE AGREEMENT
23-C03

by and between

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX
(LYNX)

and

CITY OF KISSIMMEE

relating to the providing of bus service in Osceola County, Florida

October 1, 2022

BUS SERVICE AGREEMENT

THIS BUS SERVICE AGREEMENT (the "**Agreement**") made and entered as of this 1st day of October 2022, by and between:

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX (hereinafter referred to as "**LYNX**"), a body politic and corporate, created by Part II, Chapter 343, Florida Statutes, whose address is 455 North Garland Avenue, Orlando, Florida 32801

and

CITY OF KISSIMMEE, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, FL 34741. **CITY OF KISSIMMEE** and Link 709 Kissimmee Connector shall sometimes each be referred to collectively as the "**parties.**"

W I T N E S S E T H:

WHEREAS, LYNX provides public transportation in the Central Florida area including, but not limited to, dedicated bus service for the benefit of and use by the public; and

WHEREAS, The CITY OF KISSIMMEE has expressed a need for additional or new public transportation service in and to certain portions of the City of Kissimmee identified and set forth in **Exhibit "A"** (the "**Service Area**"), attached hereto; and

WHEREAS, the Parties have agreed to LYNX establishing and/or expanding public transportation service in and to the Service Area to provide said additional bus transportation, and LYNX is prepared to do so pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises herein contained, the parties hereto do hereby agree as follows:

1. **DEFINITIONS**. For purposes of this Agreement, the following definitions shall apply, unless the context requires otherwise or another definition is expressly provided in this Agreement:

Agreement	Shall mean this Bus Service Agreement, as the same may be amended from time to time.
Bus Service	Shall mean the revenue bus service to be provided by LYNX in and to the Service Area as set forth in this Agreement.
Cost of Bus Service	Shall mean the actual cost incurred by LYNX to provide the Bus Service, which for the LYNX fiscal year ending December 9, 2022, will be based on an estimated hourly rate of $93.82 per hour including fuel and administrative costs. The foregoing hourly rate is subject to readjustment for each succeeding fiscal year as provided in paragraph three (3) below.
City	Shall have the meaning set forth in the preamble to this Agreement.

Farebox Revenue	Shall mean the revenue derived from LYNX from passengers utilizing the Bus Service. In the event any such Farebox Revenue is allocated to services provided by LYNX outside of the Service Area, then LYNX may make a reasonable allocation of said revenue so that the term "Farebox Revenue" relates solely to the Farebox Revenue for the Bus Service in the Service Area.
FDOT	Shall mean the Florida Department of Transportation.
FTA	Shall mean the Federal Transit Administration.
Monthly Cost of Bus Service	Shall mean the actual cost incurred by LYNX (based on the Cost of Bus Service and the actual hours of Bus Service) to provide the Bus Service for each and every month during the term of this Agreement.
Monthly Farebox Revenue	Shall mean the actual Farebox Revenue received from LYNX for the Bus Service during each and every month during the term of this Agreement.
Monthly Payment	Shall mean the payment made to LYNX by the CITY OF KISSIMMEE at the end of each and every month during the term of this Agreement, as provided in paragraph 6 below.
Net Monthly Cost of Bus Service	Shall mean the net cost to provide the Bus Service on a monthly basis, which for any particular month is equal to the Monthly Cost of Bus Service for that month less the Monthly Farebox Revenue for that same month.
Service Area	Shall mean the area indicated in **Exhibit "B"** attached hereto.
Service Schedule	Shall mean the frequency, times and stops for the Bus Service to be provided by LYNX, as set forth and described in paragraph 5 below.

2. **PROVIDING OF BUS SERVICE**. Pursuant to the terms and conditions of this Agreement and in consideration of the Payments, LYNX agrees to provide the Bus Service in the Service Area. In regard to providing said Bus Service, the obligation of LYNX is subject to the following:

   a. Federal, state and local regulations applicable to LYNX including, but not limited to, the rules and regulations promulgated from time to time by FDOT and/or FTA as applicable to LYNX;

   b. All conditions beyond the reasonable control of LYNX including but not limited to, Acts of God, hurricanes, matters of public safety, etc.; and

   c. The changing transportation needs of the CITY OF KISSIMMEE to the extent LYNX can accommodate such needs.

   d. The times set forth in this Agreement and other matters regarding the providing of Bus Service are not guarantees; they are projected times for stops and starts and are subject to best efforts by LYNX, including matters associated with traffic, accidents, etc.

3. **TERM**. This Agreement shall be effective as of the date hereof October 1, 2022 (the "**Commencement Date**") and shall, except as otherwise set forth herein or unless terminated in writing by either party, be completed on or before December 9, 2022 (the "**Expiration Date**"), which is the funding period for providing the Bus Service as set forth in **Exhibits "A and B"** attached hereto.

4. **TERMINATION.**

a. **Termination at Will**. This Agreement may be terminated by either party upon no less than thirty (30) calendar days' notice, without cause. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.

b. **Termination Due to Lack of Funds**. In the event funds from governmental sources relied upon to finance this Agreement become unavailable, the CITY OF KISSIMMEE or LYNX may terminate this Agreement with no less than twenty-four (24) hours written notice to the other party and to the CITY OF KISSIMMEE City Commission. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.

c. **Termination for Breach**. Unless breach is waived by the CITY OF KISSIMMEE or LYNX in writing, either party shall, in order to terminate this Agreement for breach, give the other party and the CITY OF KISSIMMEE City Commission written notice of the breach. If the breach is not cured within thirty (30) calendar days, the non-breaching party may terminate this Agreement. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Waiver by either party of breach of any provisions of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement, and shall not act as a waiver or estoppel to enforcement of any provision of this Agreement. The provisions herein do not limit the CITY OF KISSIMMEE or LYNX right to remedies at law or to damages.

5. **SCHEDULE OF BUS SERVICE**. Attached hereto as **Exhibit "B"** is a Schedule showing the proposed times, stops and service for the Bus Service. This Schedule is subject to all of the provisions of this Agreement. This schedule is not a guarantee but rather reflects the anticipated times, stops, and service. During the term of this Agreement, LYNX, after discussion with the CITY OF KISSIMMEE, may adjust the Schedule to better accommodate the overall Bus Service to be provided under this Agreement. Thus, for example, if a particular Bus Stop provides a safety hazard, then LYNX, in cooperation with the CITY OF KISSIMMEE, could move that Bus Stop to a safer location.

6. **PAYMENT FOR BUS SERVICE.** The Bus Service to be provided by LYNX pursuant to this Agreement is in consideration of the CITY OF KISSIMMEE paying to LYNX the Monthly Cost of Bus Service (Exhibit C). In that regard, the parties do hereby agree as follows:

a. For the purpose of invoicing, invoices and related matters will be sent to THE CITY OF KISSIMMEE at the following address:

CITY OF KISSIMMEE
c/o John Hambley, Planning Manager
101 Church Street

Kissimmee, FL34741

b. In any event, the obligation of LYNX to provide the Bus Service is expressly contingent upon it receiving and only to the extent it receives the required Payments set forth above.

c. Nothing contained in this Agreement shall obligate LYNX to provide for the Bus Service any other funding. Specifically, LYNX will not be obligated to provide any general funding it receives from any other government agency to the Bus Service. With respect to any bus fares that may arise from the Bus Service (including any interest, if any, that LYNX may obtain by virtue of any deposits if makes by virtue of any of the Payments), those fares, interests, etc. may be retained by LYNX and used for its other bus operations and is not required to be used for the Bus Service to be provided under this Agreement.

7. **SECURITY DEPOSIT**. No security deposit is required of the CITY OF KISSIMMEE under this Agreement.

8. **ADVERTISING**. The parties are aware and understand that LYNX undertakes an advertising program on its buses and that LYNX also does not specifically identify a specific bus on a specific route. From time to time, buses will be taken out of service for maintenance and repair and replacement, and future buses will also be used from time to time to provide the Bus Service. In addition, various rules (including FTA guidelines) provide for random assignment of buses. With this background:

a. LYNX will be entitled to place on the buses which it uses to provide the Bus Service, advertising from time to time.

b. LYNX shall have the right in its reasonable discretion as to what buses and the type of the buses that will be used to provide the Bus Service.

The foregoing assignments and other matters regarding the buses in the Bus Service will be subject in all respects to all applicable laws including FTA and FDOT requirements. Any advertising revenue obtained from LYNX in connection with the Bus Service will be the property of LYNX and will not be deemed to be any "Farebox Revenue."

9. **BOND**. The CITY OF KISSIMMEE shall not be required to furnish LYNX with any bond or other collateral conditioned for the faithful performance of the duties and due accounting for all monies received by the CITY OF KISSIMMEE under this Agreement.

10. **NON-ASSIGNABILITY**. This Agreement is not assignable by either Party without the prior written consent of the other Party.

11. **RELATIONSHIP OF OTHER PARTIES**. The Parties are aware and agree that the relationship between LYNX and the CITY OF KISSIMMEE under this Agreement shall be that of an independent contractor and not an agent.

12. **NO THIRD PARTY BENEFICIARY.** This Agreement is solely between the parties hereto and no person or persons not a party hereto shall have any rights or privileges whatsoever either as a third party beneficiary or otherwise.

13. **NOTICE.** Any notice permitted to be given to either party under this Agreement shall be in writing and shall be deemed to be given (i) in the case of delivery, when delivered to the other party at the address set forth in the preamble to this Agreement, (ii) in the case of mailing, three (3) days after said notice has been deposited, postage pre-paid, in the United States mail and sent by certified or return receipt requested to the other party at the address set forth in the preamble to this Agreement and (iii) in all other cases when such notice is actually received by the party to whom it has been sent. Notices shall be sent to the following:

LYNX:	Leonard Antmann, Chief Financial Officer 455 North Garland Avenue Orlando, Florida 32801
Copy to:	Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer 455 North Garland Avenue Orlando, Florida 32801
Copy to:	Carrie L. Sarver, Esq., B.C.S., Senior In-House Counsel 455 North Garland Avenue Orlando, Florida 32801-1518
CITY OF KISSIMMEE:	John Hambley, Planning Manager 101 Church Street Kissimmee, FL 34741

Either party may change the address to which any notices are to be given by so notifying the other parties to this Agreement as provided in this paragraph.

14. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. The parties further agree that the exclusive venue and jurisdiction over any action arising under this Agreement shall be in the courts of Orange County, Florida. Each party expressly waives any right to a jury trial.

15. **MISCELLANEOUS CLAUSES**.

a. **Sovereign Immunity**. Each party hereto is a government agency entitled to sovereign immunity under the laws of the State of Florida. Nothing contained in this Agreement, the relationship between the parties hereto, the providing of the Bus Service, or otherwise shall in any way whatsoever constitute any waiver by LYNX or the CITY OF KISSIMMEE of its rights to invoke sovereign immunity as a governmental entity.

b. **Force Majeure**. The rights and obligations and duties of the parties hereunder shall be subject to any causes beyond their reasonable control including, but not limited to, Acts of God, hurricanes, storms, and, in the case of LYNX, government regulations and directives applicable to it.

c. **Time of Essence**. The parties recognize that time is of the essence in the performance of the provisions of this Agreement provided, however, in regard to the providing of Bus Service, that is subject to the qualifications set forth in this Agreement.

d. **Legal Obligations**. This Agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

e. **No Waiver**. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party or parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all parties.

f. **Benefits of Service**. The Payments to be paid by the CITY OF KISSIMMEE to LYNX are net, and shall not be reduced based upon any other funding or benefits that LYNX may receive including, but not limited to, any funding that LYNX receives from the FTA as a part of its overall ridership total.

g. **No Oral Modification**. The parties agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

h. **Severability**. If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable.

i. **Counterparts**. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement, to produce or account for more than one (1) of such counterparts.

j. **Adjustment of Bus Routes**. The parties are aware and understand that with respect to any adjustment or modification of Bus Service, LYNX will be required to follow State and Federal guidelines relating to adjustments and modification of Bus Service. This will generally require a minimum of one hundred twenty (120) days in order to provide various required public notices.

k. **Capital Requirements (i.e., Buses)**. LYNX has generally planned for adequate buses to provide the Bus Service. If, at any time, LYNX experiences a material shortfall or lack of buses to provide the Bus Service, LYNX will immediately discuss with the CITY OF KISSIMMEE such situation and how it is to be resolved. The matter will also be brought to the attention of the Board of Directors of LYNX and the Parties will seek to arrive at a solution to provide such additional bus capacity. In doing so, the parties are aware that any solution would not necessarily involve LYNX moving buses from its other public routes. LYNX, through its Board of Directors, will have in its reasonable discretion the ability to deal with such situation.

l. **Default/Notice/Procedure to Resolve Disputes**. The parties understand and are aware that this Agreement is between two entities who mutually desire for the beneficial providing of the Bus Service under this Agreement and wish to avoid any default or misunderstandings. Thus, in the event one Party hereto believes that the other Party is in default under this Agreement, the other Party through a senior representative shall contact a senior representative of the other Party in an effort to discuss and resolve any alleged default or nonperformance. Failing such resolution, said Party will then be required to give actual written notice to the other party of said alleged default before said Party may exercise any of the rights available to it under this Agreement. With this background, the CITY OF KISSIMMEE is aware and specifically understands that the scope and quantity of the Bus Service being made available to it, is based upon the amount Lynx receives from the CITY OF KISSIMMEE. Thus, for example, if the CITY OF KISSIMMEE should fail to pay the requisite payments, LYNX could seek to enforce that payment but, at its option, could also reduce the bus service specifically within the Service Area.

m. **Service Within and Outside the Service Area**. The Bus Service to be provided by LYNX under this Agreement covers Bus Routes that are located within the Service Area, as more particularly set forth in **Exhibit "B."** LYNX is not obligated to provide the Bus Service outside the Service Area, unless otherwise agreed between the parties through an amendment to this Agreement.

n. **Independent Contract As To Employees of LYNX.** LYNX is an independent contractor and retains the right to exercise full control and supervision over its employees and their compensation and discharge. LYNX will be solely responsible for all matters relating to payment of its employees, including but not limited to the withholding and payment of employee taxes, insurance contributions, placement of insurance and pension coverages and the like.

16. **BOARD APPROVAL.** This Agreement is subject to the approval by the LYNX Board of Directors.

17. **COMPLETE AGREEMENT.** This Agreement constitutes the complete agreement between the parties hereto with respect to the management and distribution of the services contemplated herein and it may not be amended, changed or modified except in writing signed by the party to be charged by said amendment, change or modification subject to the following:

a. Modifications that are anticipated to result in no increase to LYNX operational cost per revenue hour (see Cost of Bus Service) require only the concurrence of the LYNX's Executive Director and the approval of the CITY OF KISSIMMEE City Manager.

b. Modifications that are anticipated to result in an increase to LYNX operational cost per revenue hour (see Cost of Bus Service) require the approval of the LYNX Board of Directors and the CITY OF KISSIMMEE City Commission.

IN WITNESS WHEREOF, the Parties have hereunto executed this Bus Service Agreement the day and year first above written.

Attest:

CITY OF KISSIMMEE

CITY OF KISSIMMEE CITY COMMISSION

By:_________________________________
Mayor

Olga Gonzalez, Mayor________________
(Print Name and Title of Person Signing)

Date:_________________________________

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By:_________________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: _______________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: ______________________________
Name: Carrie L. Sarver. Esq., B.C.S.
Title: Senior In-House Counsel

Date:_______________________________

EXHIBIT "A"

Description and Schedule of Bus Route(s)

The new name for the route is Link 709 Kissimmee Connector instead of 700 Kissimmee Circulator. The proposed route is for a 25-30-minutes headways during the service hours of 6:30 a.m. through 8:09 p.m. Monday through Friday. No weekend service. Link 709 Kissimmee Connector will provide locally-orientated service to improve connectivity and mobility within downtown Kissimmee. It will serve key shopping, employment, and entertainment destinations. Span of service remains the same with focus on maintaining connections to SunRail at Kissimmee Intermodal Station.

EXHIBIT “B”

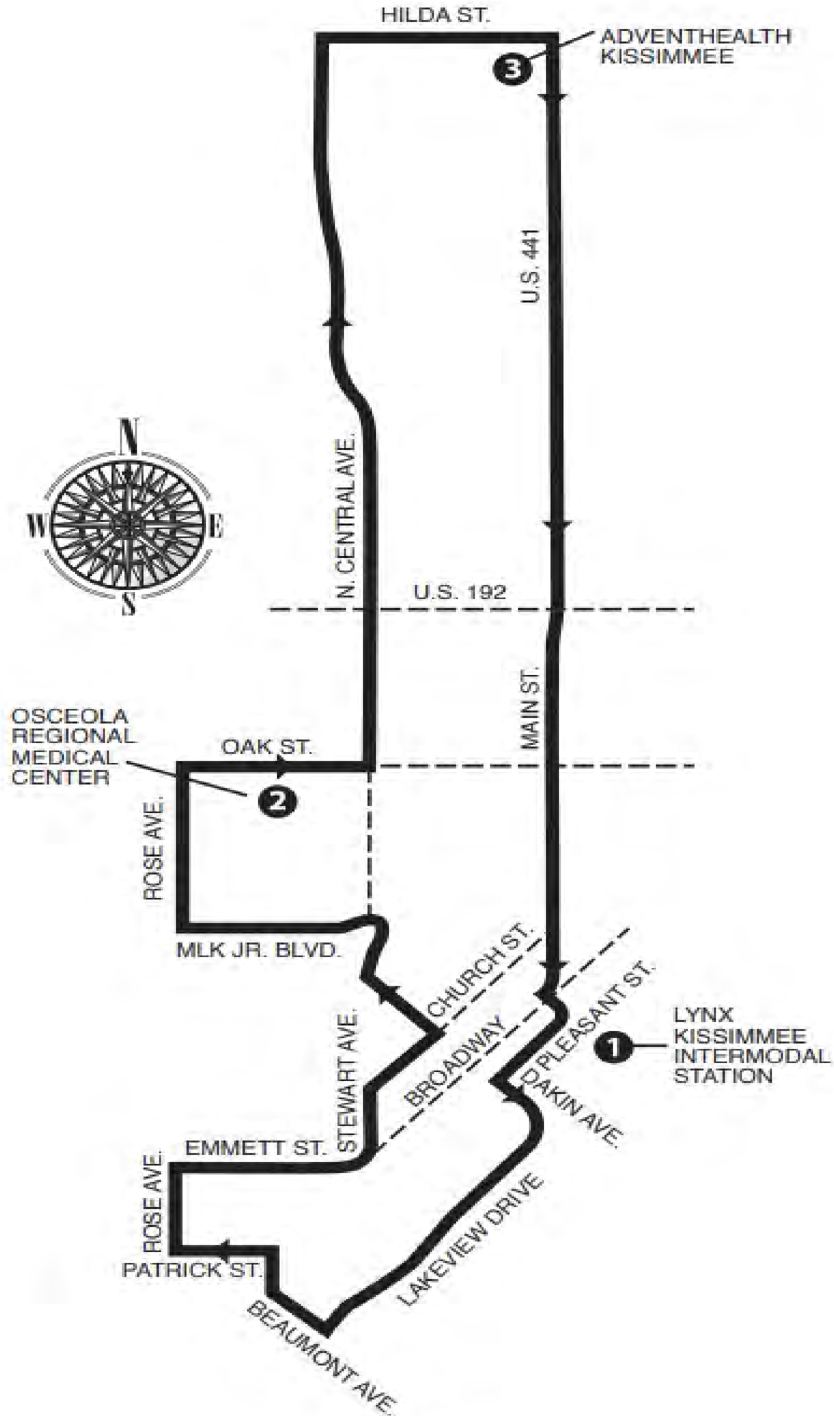
KISSIMMEE CONNECTOR

Monday - Friday

KISSIMMEE CONNECTOR

LYNX KISSIMMEE INTERMODAL STATION ❶	OSCEOLA REGIONAL MEDICAL CENTER ❷	ADVENTHEALTH KISSIMMEE ❸	LYNX KISSIMMEE INTERMODAL STATION ❶
6:30	6:45	6:54	7:05
7:00	7:15	7:24	7:35
7:30	7:45	7:54	8:05
8:00	8:15	8:24	8:35
8:30	8:45	8:54	9:05
9:00	9:15	9:24	9:35
9:30	9:45	9:54	10:05
10:00	10:15	10:24	10:35
10:30	10:45	10:54	11:05
11:00	11:15	11:24	11:35
11:30	11:45	11:54	**12:05**
12:00	**12:17**	**12:27**	**12:39**
12:30	**12:47**	**12:57**	**1:09**
1:00	**1:17**	**1:27**	**1:39**
1:35	**1:52**	**2:02**	**2:14**
2:05	**2:22**	**2:32**	**2:44**
2:35	**2:52**	**3:02**	**3:14**
3:05	**3:22**	**3:32**	**3:44**
3:35	**3:52**	**4:02**	**4:14**
4:05	**4:22**	**4:32**	**4:44**
4:45	**5:02**	**5:12**	**5:24**
5:15	**5:32**	**5:42**	**5:54**
5:45	**6:02**	**6:12**	**6:24**
6:15	**6:32**	**6:42**	**6:54**
6:40	**6:57**	**7:07**	**7:19**
7:05	**7:22**	**7:32**	**7:44**
7:30	**7:47**	**7:57**	**8:09**

P.M. Times are shown in bold



23-C03

Kissimmee Connector Link 709

Exhibit C

Description of Appropriated Amount
October 1, 2022 through December 9, 2022

Fixed Route Operating Costs

Link Services	Amount
Link 709	$ 98,597

Annual Funding Request **$98,597**

FY2023 Billing Schedule

October-22	$41,411
November-22	$43,383
December-22	$13,803
January-23	$0
February-23	$0
March-23	$0
April-23	$0
May-23	$0
June-23	$0
July-23	$0
August-23	$0
September-23	$0

Annual Funding Request **$98,597**

DRAFT

BUS SERVICE AGREEMENT
23-C04

by and between

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX
(LYNX)

and

ORANGE COUNTY, FLORIDA

relating to the providing of bus service in **the International Drive Community Redevelopment Area of** Orange County, Florida

October 1, 2022

BUS SERVICE AGREEMENT

THIS BUS SERVICE AGREEMENT (the "**Agreement**") made and entered as of this 1st day of October, 2022 by and between:

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX (hereinafter referred to as "**LYNX**"), a body politic and corporate, created by Part II, Chapter 343, Florida Statutes, whose address is 455 North Garland Avenue, Orlando, Florida 32801

and

ORANGE COUNTY, FLORIDA a charter county and political subdivision of the State of Florida, whose principal address is Post Office Box 1393, Orlando, Florida 32802-1393 (hereinafter the **"ORANGE COUNTY"**) (hereinafter collectively referred to as "Parties"

W I T N E S S E T H:

WHEREAS, LYNX provides public transportation in the Central Florida area including, but not limited to, dedicated bus service for the benefit of and use by the public; and

WHEREAS, ORANGE COUNTY has expressed a need for additional or new public transportation service in within the International Drive Community Redevelopment Area identified and set forth in **Exhibit "A"** (the "**Service Area**"), attached hereto; and

WHEREAS, the Parties have agreed to LYNX establishing and/or expanding public transportation service in and to the Service Area to provide said additional bus transportation, and LYNX is prepared to do so pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises herein contained, the parties hereto do hereby agree as follows:

1. **DEFINITIONS**. For purposes of this Agreement, the following definitions shall apply, unless the context requires otherwise or another definition is expressly provided in this Agreement:

Agreement	Shall mean this Bus Service Agreement, as the same may be amended from time to time.
Bus Service	Shall mean the revenue bus service to be provided by LYNX in and to the Service Area as set forth in this Agreement.
Cost of Bus Service	Shall mean the cost of incurred by LYNX to provide the Bus Service, which for the LYNX fiscal year ending September 30, 2023, will be based on an estimated hourly rate of $93.82 per hour including fuel and administrative costs. The foregoing hourly rate is subject to readjustment for each succeeding fiscal year as provided in paragraph three (3) below.
City	Shall have the meaning set forth in the preamble to this Agreement.

FDOT	Shall mean the Florida Department of Transportation.
FTA	Shall mean the Federal Transit Administration.
Monthly Cost of Bus Service	Shall mean the actual cost incurred by LYNX (based on the Cost of Bus Service and the actual hours of Bus Service) to provide the Bus Service for each and every month during the term of this Agreement.
Monthly Payment	Shall mean the payment made to LYNX by ORANGE COUNTY at the end of each and every month during the term of this Agreement, as provided in paragraph 6 below.
Service Area	Shall mean the area indicated in **Exhibit "A"** attached hereto.
Service Schedule	Shall mean the frequency, times and stops for the Bus Service to be provided by LYNX, as set forth and described in paragraph 5 below.

2. **PROVIDING OF BUS SERVICE**. Pursuant to the terms and conditions of this Agreement and in consideration of the Payments, LYNX agrees to provide the Bus Service in the Service Area. In regard to providing said Bus Service, the obligation of LYNX is subject to the following:

   a. Federal, state and local regulations applicable to LYNX including, but not limited to, the rules and regulations promulgated from time to time by FDOT and/or FTA as applicable to LYNX;

   b. All conditions beyond the reasonable control of LYNX including but not limited to, Acts of God, hurricanes, matters of public safety, etc.; and

   c. The changing transportation needs of ORANGE COUNTY to the extent LYNX can accommodate such needs.

   d. The times set forth in this Agreement and other matters regarding the providing of Bus Service are not guarantees; they are projected times for stops and starts and are subject to best efforts by LYNX, including matters associated with traffic, accidents, etc.

3. **TERM**. This Agreement shall be effective as of the date hereof October 1, 2022 (the "**Commencement Date**") and shall, except as otherwise set forth herein or unless terminated in writing by either party, be completed on or before September 30, 2023 (the "**Expiration Date**"), which is the funding period for providing the Bus Service as set forth in **Exhibits "A & B"** attached hereto.

   No later than six (6) months before the end of each fiscal year of this Agreement (based on a September 30 fiscal year), ORANGE COUNTY and LYNX shall meet in good faith to discuss each party's intentions to negotiate an agreement for the continuance of service, as well as to consider any adjustment in the hourly cost of providing the Bus Service as set forth under Cost of Bus Service, to reflect any changes in LYNX's cost of doing so.

4. **TERMINATION.**

a. **Termination at Will**. This Agreement may be terminated by either party upon no less than thirty (30) calendar days' notice, without cause. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.

b. **Termination Due to Lack of Funds**. In the event funds from governmental sources relied upon to finance this Agreement become unavailable, ORANGE COUNTY or LYNX may terminate this Agreement with no less than twenty-four (24) hours written notice to the other party and to the INTERNATIONAL DRIVE COMMUNITY REDEVELOPMENT AGENCY. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.

c. **Termination for Breach**. Unless breach is waived by the ORANGE COUNTY or LYNX in writing, either party shall, in order to terminate this Agreement for breach, give the other party and ORANGE COUNTY written notice of the breach. If the breach is not cured within thirty (30) calendar days, the non-breaching party may terminate this Agreement. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Waiver by either party of breach of any provisions of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement, and shall not act as a waiver or estoppel to enforcement of any provision of this Agreement. The provisions herein do not limit ORANGE COUNTY or LYNX right to remedies at law or to damages.

5. **SCHEDULE OF BUS SERVICE**. Attached hereto as **Exhibit "B"** is a Schedule showing the proposed times, stops and service for the Bus Service. This Schedule is subject to all of the provisions of this Agreement. This schedule is not a guarantee but rather reflects the anticipated times, stops, and service. During the term of this Agreement, LYNX, after discussion with the INTERNATIONAL DRIVE COMMUNITY REDEVELOPMENT AGENCY, may adjust the Schedule to better accommodate the overall Bus Service to be provided under this Agreement. Thus, for example, if a particular Bus Stop provides a safety hazard, then LYNX, in cooperation with the INTERNATIONAL DRIVE COMMUNITY REDEVELOPMENT AGENCY, could move that Bus Stop to a safer location.

6. **PAYMENT FOR BUS SERVICE.** The Bus Service to be provided by LYNX pursuant to this Agreement is in consideration of ORANGE COUNTY paying to LYNX the Net Monthly Cost of Bus Service (Exhibit C) based on service hours for a total fiscal year 2022-2023 amount of $1,516,581. In that regard, the parties do hereby agree as follows:

a. For the purpose of invoicing, invoices and related matters will be sent to ORANGE COUNTY at the following address:

ORANGE COUNTY
c/o Renzo Nastasi, Transportation Planning Manager
Renzo.nastasi@ocfl.net
4200 S John Young Parkway
Orlando, FL 32839

b. In any event, the obligation of LYNX to provide the Bus Service is expressly contingent upon it receiving and only to the extent it receives the required Payments set forth above.

c. Nothing contained in this Agreement shall obligate LYNX to provide for the Bus Service any other funding. Specifically, LYNX will not be obligated to provide any general funding it receives from any other government agency to the Bus Service. With respect to any bus fares that may arise from the Bus Service (including any interest, if any, that LYNX may obtain by virtue of any deposits if makes by virtue of any of the Payments), those fares, interests, etc. may be retained by LYNX and used for its other bus operations and is not required to be used for the Bus Service to be provided under this Agreement.

7. **SECURITY DEPOSIT**. No security deposit is required of ORANGE COUNTY under this Agreement.

8. **ADVERTISING**. The parties are aware and understand that LYNX undertakes an advertising program on its buses and that LYNX also does not specifically identify a specific bus on a specific route. From time to time, buses will be taken out of service for maintenance and repair and replacement, and future buses will also be used from time to time to provide the Bus Service. In addition, various rules (including FTA guidelines) provide for random assignment of buses. With this background:

a. LYNX will be entitled to place on the buses which it uses to provide the Bus Service, advertising from time to time.

b. LYNX shall have the right in its reasonable discretion as to what buses and the type of the buses that will be used to provide the Bus Service.

The foregoing assignments and other matters regarding the buses in the Bus Service will be subject in all respects to all applicable laws including FTA and FDOT requirements. Any advertising revenue obtained from LYNX in connection with the Bus Service will be the property of LYNX and will not be deemed to be any "Farebox Revenue."

9. **BOND**. ORANGE COUNTY shall not be required to furnish LYNX with any bond or other collateral conditioned for the faithful performance of the duties and due accounting for all monies received by the ORANGE COUNTY under this Agreement.

10. **NON-ASSIGNABILITY**. This Agreement is not assignable by either Party without the prior written consent of the other Party.

11. **RELATIONSHIP OF OTHER PARTIES**. The Parties are aware and agree that the relationship between LYNX and ORANGE COUNTY under this Agreement shall be that of an independent contractor and not an agent.

12. **NO THIRD PARTY BENEFICIARY.** This Agreement is solely between the parties hereto and no person or persons not a party hereto shall have any rights or privileges whatsoever either as a third party beneficiary or otherwise.

13. **NOTICE.** Any notice permitted to be given to either party under this Agreement shall be in writing and shall be deemed to be given (i) in the case of delivery, when delivered to the other party at the

address set forth in the preamble to this Agreement, (ii) in the case of mailing, three (3) days after said notice has been deposited, postage pre-paid, in the United States mail and sent by certified or return receipt requested to the other party at the address set forth in the preamble to this Agreement and (iii) in all other cases when such notice is actually received by the party to whom it has been sent. Notices shall be sent to the following:

LYNX:	Leonard Antmann, Chief Financial Officer 455 North Garland Avenue Orlando, Florida 32801
Copy to:	Tiffany Homler Hawkins, Interim Chief Executive Officer & Chief Administrative Officer 455 North Garland Avenue Orlando, Florida 32801
Copy to:	Carrie L. Sarver, Esq., B.C.S., Senior In-House Counsel 455 North Garland Avenue Orlando, Florida 32801-1518
FUNDING PARTNER:	Byron W. Brooks, AICP, County Administrator P. O. Box 1393 Orlando, FL 32802-1393

Either party may change the address to which any notices are to be given by so notifying the other parties to this Agreement as provided in this paragraph.

14. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. The parties further agree that the exclusive venue and jurisdiction over any action arising under this Agreement shall be in the courts of Orange County, Florida. Each party expressly waives any right to a jury trial.

15. **MISCELLANEOUS CLAUSES**.

a. **Sovereign Immunity**. Each party hereto is a government agency entitled to sovereign immunity under the laws of the State of Florida. Nothing contained in this Agreement, the relationship between the parties hereto, the providing of the Bus Service, or otherwise shall in any way whatsoever constitute any waiver by LYNX or ORANGE COUNTY of its rights to invoke sovereign immunity as a governmental entity.

b. **Force Majeure**. The rights and obligations and duties of the parties hereunder shall be subject to any causes beyond their reasonable control including, but not limited to, Acts of God, hurricanes, storms, and, in the case of LYNX, government regulations and directives applicable to it.

c. **Time of Essence**. The parties recognize that time is of the essence in the performance of the provisions of this Agreement provided, however, in regard to the providing of Bus Service, that is subject to the qualifications set forth in this Agreement.

d. **Legal Obligations**. This Agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

e. **No Waiver**. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party or parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all parties.

f. **Benefits of Service**. The Payments to be paid by ORANGE COUNTY to LYNX are net, and shall not be reduced based upon any other funding or benefits that LYNX may receive including, but not limited to, any funding that LYNX receives from the FTA as a part of its overall ridership total.

g. **No Oral Modification**. The parties agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

h. **Severability**. If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable.

i. **Counterparts**. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement, to produce or account for more than one (1) of such counterparts.

j. **Adjustment of Bus Routes**. The parties are aware and understand that with respect to any adjustment or modification of Bus Service, LYNX will be required to follow State and Federal guidelines relating to adjustments and modification of Bus Service. This will generally require a minimum of one hundred twenty (120) days in order to provide various required public notices.

k. **Capital Requirements (i.e., Buses)**. LYNX has generally planned for adequate buses to provide the Bus Service. If, at any time, LYNX experiences a material shortfall or lack of buses to provide the Bus Service, LYNX will immediately discuss with ORANGE COUNTY such situation and how it is to be resolved. The matter will also be brought to the attention of the Board of Directors of LYNX and the Parties will seek to arrive at a solution to provide such additional bus capacity. In doing so, the parties are aware that any solution would not necessarily involve LYNX moving buses from its other public routes. LYNX, through its Board of Directors, will have in its reasonable discretion the ability to deal with such situation.

l. **Default/Notice/Procedure to Resolve Disputes**. The parties understand and are aware that this Agreement is between two entities who mutually desire for the beneficial providing of the Bus Service under this Agreement and wish to avoid any default or misunderstandings. Thus, in the event one Party hereto believes that the other Party is in default under this Agreement, the other Party through a senior representative shall contact a senior representative of the other Party in an effort to discuss and resolve any alleged default or nonperformance. Failing such resolution, said Party will then be required to give actual written notice to the other party of said alleged default before said Party may exercise any of the rights available to it under this Agreement. With this background, ORANGE COUNTY is aware and specifically understands that the scope and quantity of the Bus Service being made available to it, is based upon the amount Lynx receives from the INTERNATIONAL DRIVE COMMUNITY REDEVELOPMENT AGENCY. Thus, for example, if ORANGE COUNTY should fail to pay the requisite payments, LYNX could seek to enforce that payment but, at its option, could also reduce the bus service specifically within the Service Area.

m. **Service Within and Outside the Service Area**. The Bus Service to be provided by LYNX under this Agreement covers Bus Routes that are located within the Service Area, as more particularly set forth in **Exhibit "B."**

n. **Independent Contract As To Employees of LYNX.** LYNX is an independent contractor and retains the right to exercise full control and supervision over its employees and their compensation and discharge. LYNX will be solely responsible for all matters relating to payment of its employees, including but not limited to the withholding and payment of employee taxes, insurance contributions, placement of insurance and pension coverages and the like.

16. **BOARD APPROVAL.** This Agreement is subject to the approval by the LYNX Board of Directors.

17. **COMPLETE AGREEMENT.** This Agreement constitutes the complete agreement between the parties hereto with respect to the management and distribution of the services contemplated herein and it may not be amended, changed or modified except in writing signed by the party to be charged by said amendment, change or modification subject to the following:

a. Modifications that are anticipated to result in no increase to LYNX operational cost per revenue hour (see Cost of Bus Service) require only the concurrence of the LYNX's Executive Director and the approval of the ORANGE COUNTY, County Commissioners.

b. Modifications that are anticipated to result in an increase to LYNX operational cost per revenue hour (see Cost of Bus Service) require the approval of the LYNX Board of Directors and the ORANGE COUNTY, County Commissioners.

[Signatures appear on following page]

IN WITNESS WHEREOF, the Parties have hereunto executed this Bus Service Agreement the day and year first above written.

Attest:

ORANGE COUNTY

ORANGE COUNTY, COUNTY COMMISSION

By:___________________________________

____

Jerry L. Demings
Orange County Mayor

By:___________________________________
Deputy Clerk

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

Date:_________________________________

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By:___________________________________
Name: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer & Chief Administrative Officer

Date: _________________________________

This Agreement has been reviewed as to form by LYNX Senior In-House Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

By: _______________________________
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel

Date:_______________________________

EXHIBIT "A"

Description and Schedule of Bus Route(s)

This agreement is for an increase in LYNX bus service in the area defined as ORANGE COUNTY (FUNDING PARTNER)
Seven LYNX bus routes serve the I-Drive FUNDING PARTNER directly (see map below for FUNDING PARTNER boundaries and LYNX bus routes serving the FUNDING PARTNER)

- Link 8 – W. Oak Ridge Rd./ International Drive
- Link 37 – Pine Hills/Florida Mall
- Link 38 – Universal Orlando/I-Drive Express
- Link 42 – International Drive/Orlando Int'l Airport
- Link 57 – John Young Parkway
- Link 111 – SeaWorld/Orlando Int'l Airport
- Link 350 – Destination Parkway/SeaWorld/Disney Express

The agreement will be for an increase in bus service for routes specifically serving the I-Drive corridor of the FUNDING PARTNER area (Links 8, 37, 38 and 42)

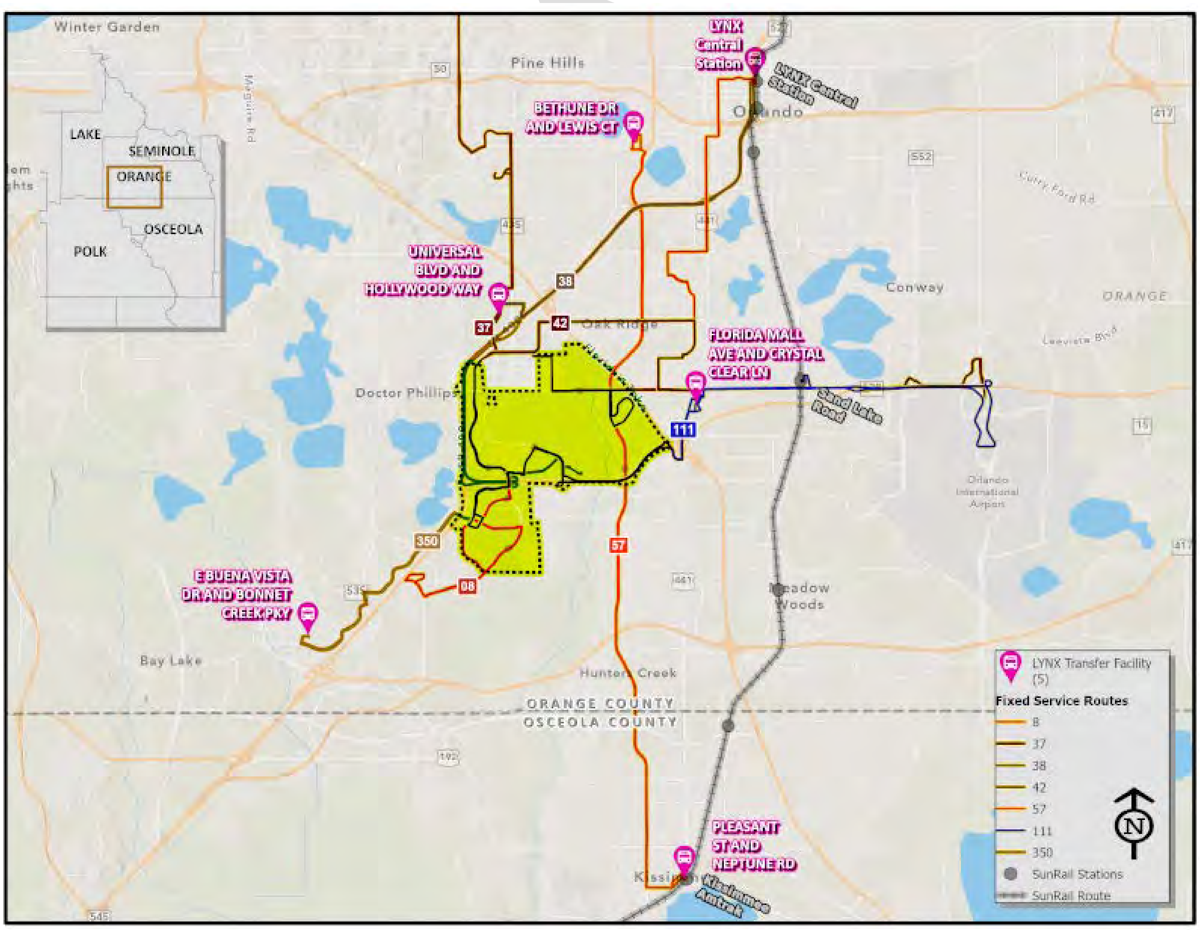
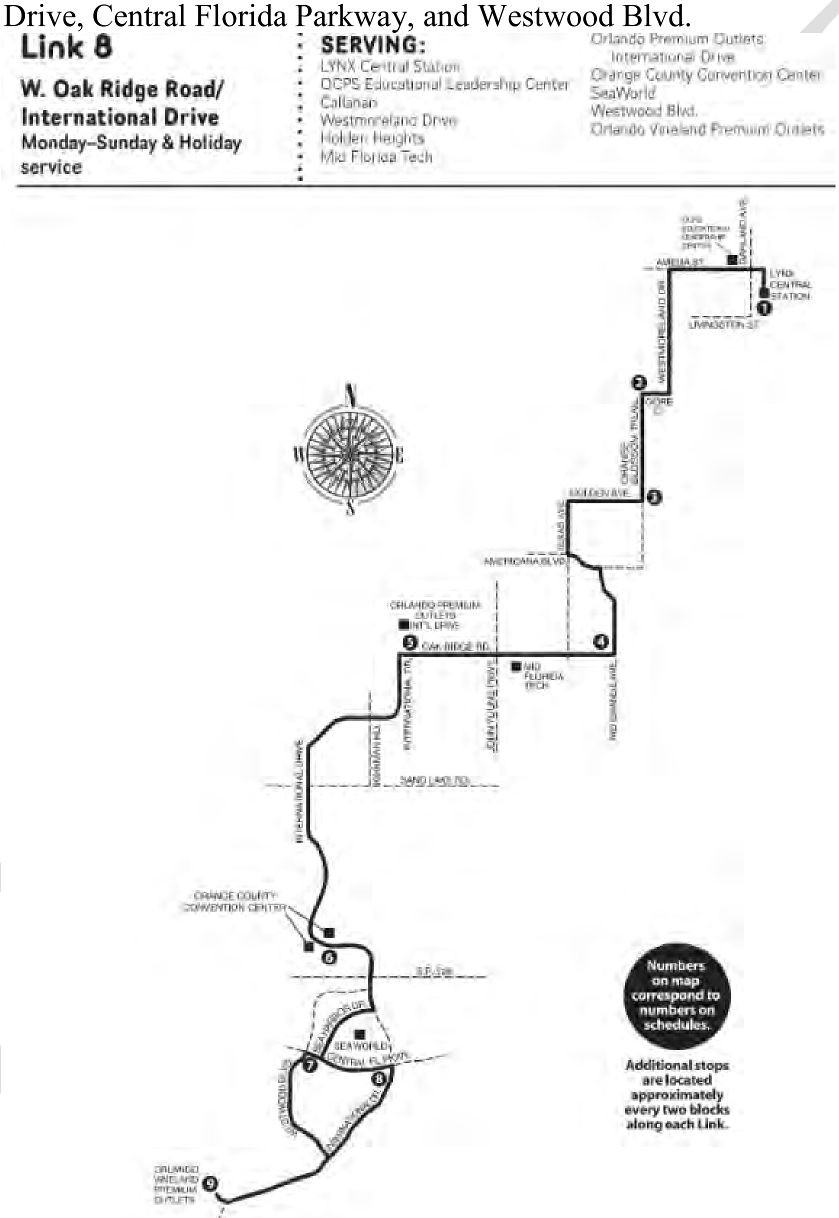


EXHIBIT "B"

Description of Bus Services

Link 8 – West Oak Ridge Road/International Drive

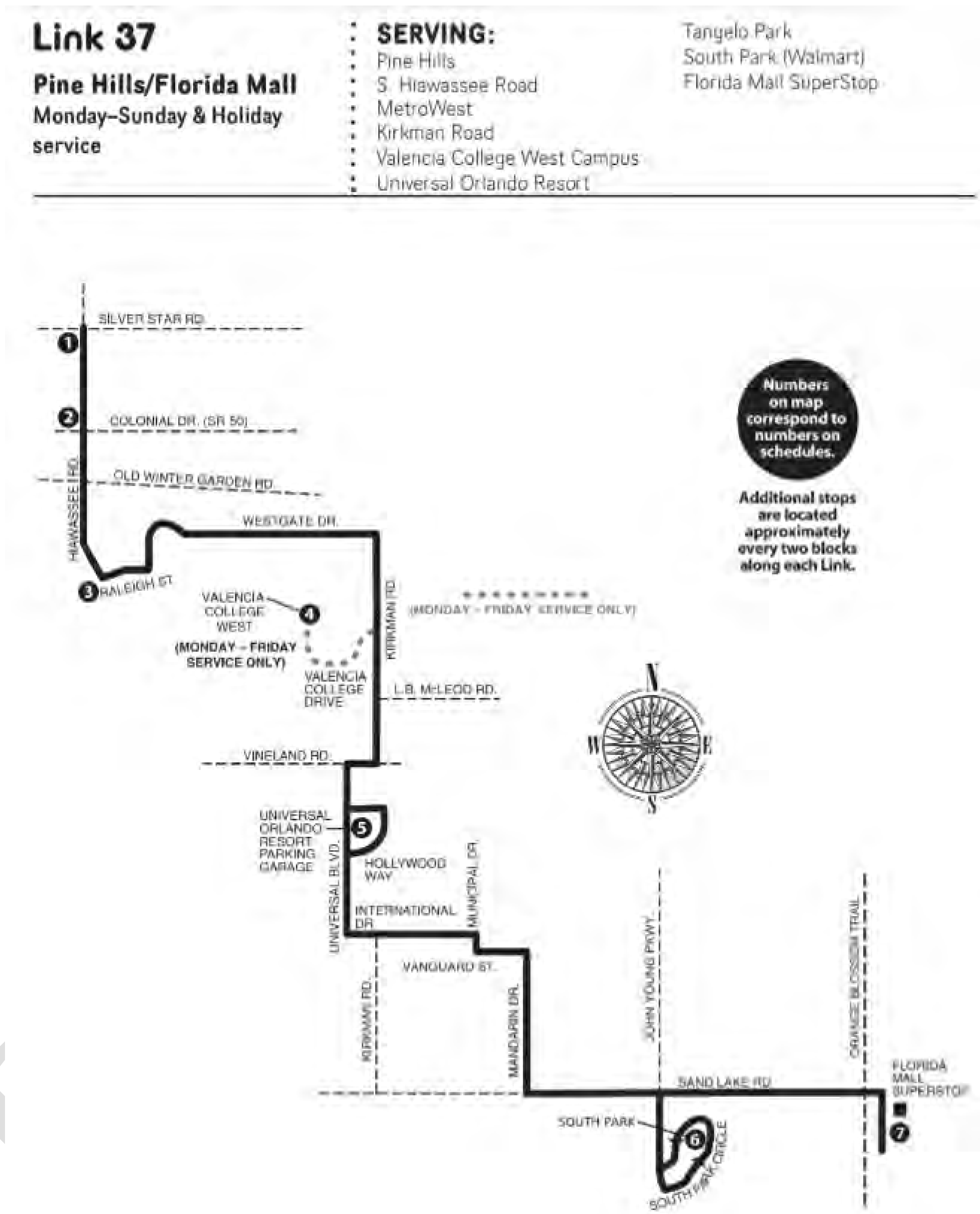
Operates between LYNX Central Station (LCS) and the Orlando Vineland Premium Outlets via Amelia Street, Westmoreland Drive, Gore Street, Orange Blossom Trail, Holden Avenue, Texas Avenue, Americana Blvd., Rio Grande Avenue, Oak Ridge Road, International Drive, Sea Harbor Drive, Central Florida Parkway, and Westwood Blvd.



23-C04

Link 37 – Pine Hills/Florida Mall

Operates between Silver Star Road/Hiawassee Road and Florida Mall Superstop via Hiawassee Road, Raleigh Street, Westgate Drive, Kirkman Road, Vineland Road, Universal Blvd., International Drive, Municipal Drive, Vanguard Street, Mandarin Drive, Sand Lake Road, John Young Parkway, and South Park Circle

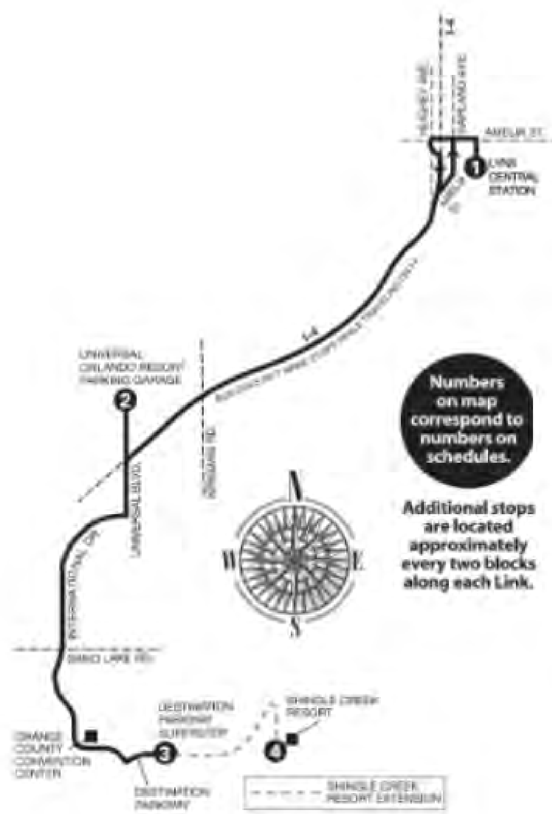


Link 38 – Universal Orlando/I-Drive Express

Operates between LYNX Central Station (LCS) and Destination Parkway Superstop via Amelia Street, Interstate 4, Hollywood Way, Universal Blvd., International Drive, and Destination Parkway.

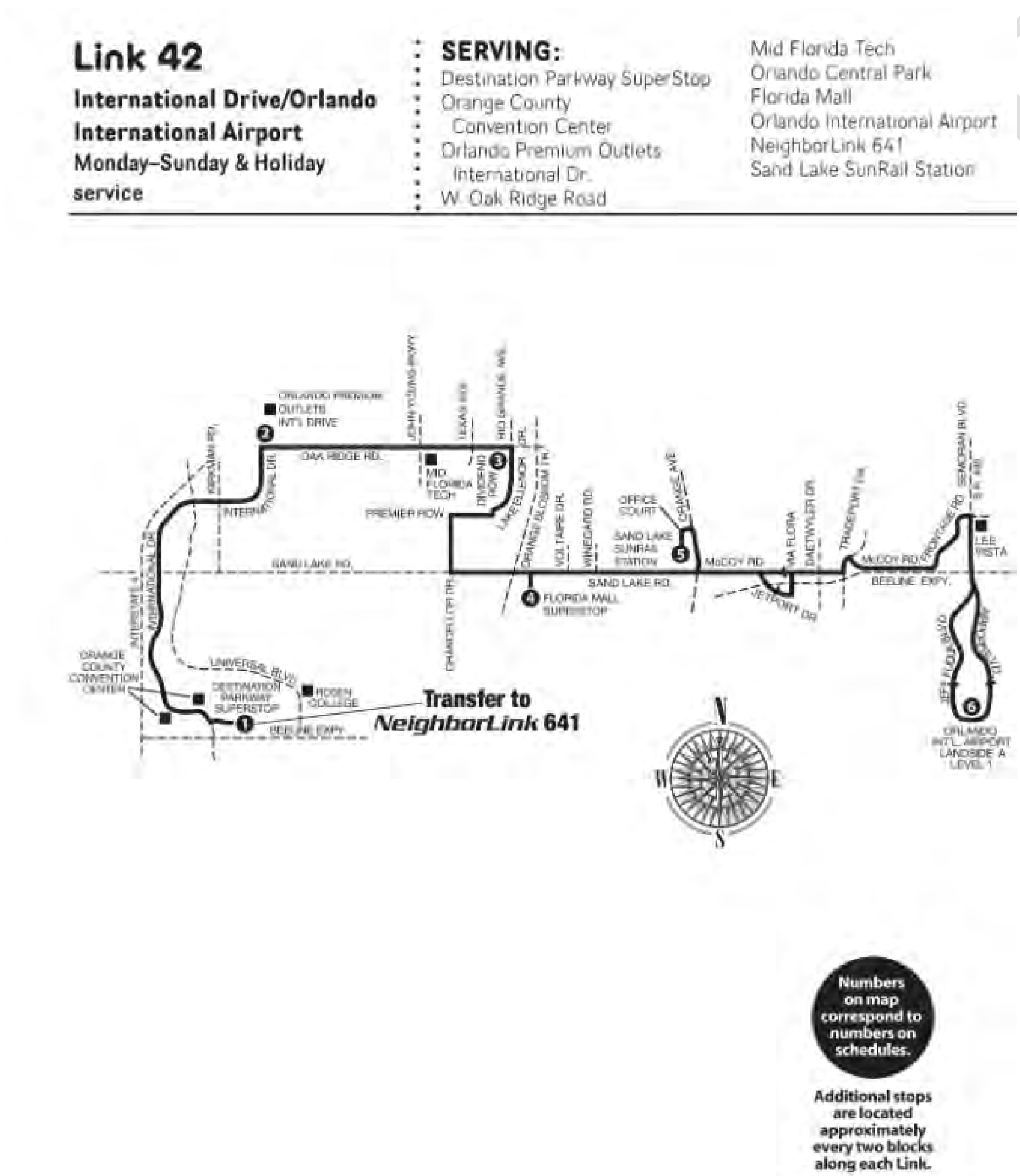
Link 38
Universal Orlando/ I-Drive Express
Monday–Sunday & Holiday service

SERVING:
LYNX Central Station (Downtown Orlando)
International Drive
Orange County Convention Center
Universal Orlando Resort
Destination Parkway SuperStop
Rosen Shingle Creek Resort



Link 42 – International Drive/Orlando International Airport

Operates between Orlando International Airport (OIA) and Destination Parkway Superstop via Destination Parkway, International Drive, Oak Ridge Road, Lake Ellenor Drive, Premier Row, Chancellor Drive, Sand Lake Road, Orange Ave., Office Court, Jetport Drive, McCoy Road, Via Flora, Tradeport Drive, Frontage Road, and Jeff Fuqua Blvd.



International Drive

Exhibit C

Description of Appropriated Amount

October 1, 2022 through September 30, 2023

Fixed Route Operating Costs

Link Services		**Amount**
Link 8		$92,417
Link 37		$192,622
Link 38		$1,108,350
Link 42		$123,192
Net Funding Request from City		**$1,516,581**

FY2023 Billing Schedule

October-22	$126,382
November-22	$126,382
December-22	$126,382
January-23	$126,382
February-23	$126,382
March-23	$126,382
April-23	$126,382
May-23	$126,382
June-23	$126,382
July-23	$126,382
August-23	$126,382
September-23	$126,379

Annual Funding Request from County **$1,516,581**