




Interoffice Memorandum

October 15, 2020

AGENDA ITEM

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

THRU: Lonnie C. Bell, Jr., Director 
Community and Family Services Department

FROM: **Matt Suedmeyer, Manager**
Parks and Recreation Division
(407) 836-6202

SUBJECT: **Consent Agenda Item – October 27, 2020**
Contract No. 20-C59 Contribution Agreement – Pine Hills Trail Phase II

The Central Florida Regional Transportation Authority (LYNX) is requesting that the Parks and Recreation Division enter into a contribution agreement with them for the construction of a 950 foot segment of Pine Hills Trail Phase II, starting at Silver Star Road and ending at Belco Drive. The project is currently in the final design phase and will include a paved, multi-use trail that integrates into the proposed Pine Hills Bus Transfer Station located along Belco Drive. The County's contribution of \$344,000 has been approved for fiscal year 2021 and will be allocated to design, construction, and/or maintenance of the project.

LYNX requires the executed agreement prior to construction, which is anticipated to begin in April of 2021. The Agreement outlines the responsibilities of participating agencies. The Agreement has been reviewed, revised, and approved by the County Attorney's Office, Risk Management Division, and Real Estate Management Division.

ACTION REQUESTED: Approval and execution of Contract No. 20-C59 Contribution Agreement by and among Central Florida Regional Transportation Authority D/B/A LYNX and Orange County, Florida for the Pine Hills Trail Phase II. District 6

MS/rr:jam

Attachment

c: Byron W. Brooks, County Administrator
Carla Bell Johnson, Acting Assistant County Administrator
Yolanda Brown, Fiscal Manager, Community and Family Services
Auria Oliver, Management & Budget Advisor, Office of Management and Budget

BCC Mtg. Date: October 27, 2020

CONTRACT NO. 20-C59
CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT ("Agreement") is made and entered into as of the Effective Date (hereinafter defined) by and among **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY D/B/A LYNX**, a body politic and corporate, created by Part III, Chapter 343, Florida Statutes, and whose principal address is 455 North Garland Avenue, Suite 500, Orlando, Florida 32801 ("LYNX"), and **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida whose principal address is 201 South Rosalind Avenue, Orlando, Florida 32801 ("County").

WITNESSETH:

WHEREAS, LYNX is the fee simple owner of that certain real property located within Orange County, Florida, as legally described in **Exhibit "A,"** attached hereto ("Property"); and

WHEREAS, LYNX intends to construct on the Property a continuation of the Pine Hills Trail, including 950 feet for Pine Hills Trail Phase II (the "Project"), which is reflected on the sketch attached hereto as **Exhibit "B"** (the "Concept Plan") and thereafter own and maintain the Project; and

WHEREAS, LYNX has agreed to engage professionals to design, permit, engineer, develop and construct the Project based on the terms and conditions of this Agreement and the mutual obligations of County and LYNX as more particularly set forth herein; and

WHEREAS, County has agreed to contribute to LYNX the Capital Contribution (as defined below) for the design, engineering, development, permitting, construction and/or maintenance as more particularly set forth herein; and

WHEREAS, LYNX and County desire to set forth the terms and conditions of their agreement for the design, engineering, development, permitting, construction, and/or maintenance of the Project, and contribution of the Capital Contribution.

NOW THEREFORE, in consideration of the mutual promises made herein and for other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, the parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **County's Payment.** County shall contribute to LYNX a one-time contribution in an amount equal to Three Hundred Forty-Four Thousand and No/100 Dollars (\$344,000.00) ("County's Capital Contribution") to be used by LYNX for the design, permitting, engineering, development, construction and/or maintenance of the Project (as determined by LYNX). The County's Capital Contribution shall be paid to LYNX on or before December 1, 2020.
3. **Construction of the Project.** LYNX shall cause construction of the Project to commence as soon as reasonably practical after the issuance of all required permits. Once construction has commenced on the Project, LYNX shall cause its contractor to diligently and in good faith proceed with the construction of the Project. LYNX will request that its contractor prepare a timeline to completion and will provide such timeline to County once it has been made available.

4. **Use of County's Capital Contribution/Surplus Funds and Shortfall.** LYNX shall use the County's Capital Contribution for the costs associated with the design, engineering, development, permitting, construction, and/or maintenance of the Project. Should the County's Capital Contribution exceed the final costs and expenses incurred for the design, engineering, development, permitting, construction, and/or maintenance of the Project, or in the event LYNX fails to complete the construction of the Project within three (3) years of the Effective Date, LYNX agrees to repay to the County that portion of the County's Capital Contribution not otherwise expended toward the Project. LYNX shall be solely responsible for any costs and expenses incurred in excess of the County's Capital Contribution related to Project.

5. **Maintenance of Project.** LYNX will be responsible for maintaining the Project for the Term (as defined below), and unless otherwise mutually agreed to in writing upon extension of the Term pursuant to paragraph 13 herein, LYNX shall remain responsible for maintaining the Project for each Renewal Period (as defined below). In the event maintenance of the Project is transferred to County, the parties shall cooperate in good faith to amend the Recreational Trail Easement required by paragraph 6 herein to reflect same. LYNX's maintenance obligations of the Project will be limited to those areas of the Project that fall within the boundaries of the Pine Hills Transfer Center as reflected on the Concept Plan and do not include maintenance of any areas in or along the County right-of-way, which shall be maintained by the County. LYNX's maintenance obligations shall be limited to routine repairs and maintenance, trash pickup and landscape maintenance. Significant repairs or reconstruction activities are not considered maintenance. To the extent that significant repairs or reconstruction activities are required, the parties will meet and discuss in good faith how best to make and pay for such significant repairs or reconstruction activities.

6. **Recreational Trail Easement.** No later than 60 days following completion of the construction of the Project, LYNX shall convey to the County a non-exclusive, perpetual Recreational Trail Easement for a continuation of the multi-use Pine Hills Trail accommodating pedestrians and non-motorized traffic, as described in the Orange County Trails Master Plan, dated as of August 2012, as amended (the "Master Plan"). The Recreational Trail Easement shall substantially conform to the easement attached hereto as "**Exhibit C.**" LYNX shall, at its sole cost and expense, prepare the sketch of description for the Recreational Trail Easement, which shall be based on the as-built survey upon completion of construction. County acknowledges that Duke Energy has an easement (the "**Duke Easement**") across the Project as reflected in that certain Easement recorded in Deed Book 732, Page 304, and Deed Book 807, Page 299, as affected by Supplemental Easement for Additional Facilities in Existing Right-of-Way recorded in Official Records Book 5962, Page 673, Public Records of Orange County, Florida. The rights granted hereunder or under the Recreational Trail Easement shall be subject to all pre-existing easements, including the Duke Easement.

7. **Lobbying.** LYNX shall not expend any funds paid under this Agreement for any lobbyist, as such term is defined in section 2-351 of the Orange County Code, to engage in any lobbying activities designed to influence decisions or other foreseeable actions of the Board of County Commissioners or the governing body of any other municipality located within Orange County.

8. **Permitting.** LYNX shall be responsible for obtaining or causing to be obtained all land use, zoning, special exception, building, development and environmental permits or approvals necessary for the proper execution and completion of the work which are legally required hereunder.

9. **Indemnification.** To the extent permitted by law, 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 attorney's fees) attributable to its negligent acts or omissions, or those of its 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. 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.

10. **Audit.** County and the Orange County Comptroller ("Comptroller"), or designee, shall have the right to audit from time to time for compliance with the terms, conditions, obligations, limitations, restrictions and requirements of this Agreement, the use of the County's Capital Contribution for the Project. Such right shall extend for a period of five (5) years after completion of the Project. LYNX agrees to provide reasonable assistance in providing documents, materials, data, information and records to County and the Comptroller or designee in the performance of these audits as requested by the Comptroller or County. In those situations where records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the Comptroller's representatives shall be provided with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats. Such activity shall be conducted during normal business hours.

11. **Notice.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly received as of (i) the date and time the same are personally delivered, transmitted electronically (i.e., facsimile or e-mail); (ii) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested; or (iii) within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

LYNX: Central Florida Regional Transportation Authority d/b/a LYNX
Attn: Jeffrey Reine
455 North Garland Avenue, Suite 500
Orlando, Florida 32801
Telephone: (407) 254-6046
Facsimile: (407) 254-6308
Email: jreine@golynx.com

With a copy to: Akerman LLP
Attn: Patrick T. Christiansen, Esq.
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801
Telephone: (407) 419-8545
Telecopy: (407) 254-4233
Email: patrick.christiansen@akerman.com

COUNTY: Orange County Parks and Recreation Division
Attn: Manager
4801 West Colonial Drive
Orlando, Florida 32808

With a copy to: County Administrator
Orange County, Florida
201 South Rosalind Avenue, Fifth Floor
Orlando, Florida 32801

and

County Attorney
Orange County, Florida
201 South Rosalind Avenue, Third Floor
Orlando, Florida 32801

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided. The attorneys for the parties set forth herein may deliver and receive notices on behalf of their clients.

12. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the last of the parties hereto signs this Agreement ("Effective Date").

13. **Term and Termination.** The term of this Agreement (the "Term") shall commence on the Effective Date and continue for a period of twenty (20) years and, thereafter, may be renewed for successive five (5) year periods (each a "Renewal Period") upon mutual, written agreement of the parties. Either party may elect not to renew the Term for any Renewal Period by providing written notice of its desire not to renew prior to the end of the then-current period. Prior to the expiration of the Term or any Renewal Period, should County discontinue operations of the Pine Hills Trail and, as a result, no longer require access to the Project as part of the Pine Hills Trail, County shall provide LYNX with notice of same and LYNX may, in its discretion, terminate this Agreement upon delivery of written notice to County.

14. **Amendments.** This Agreement may be amended upon the mutual written consent of the parties hereto.

15. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party to the extent incorporated into this Agreement.

16. **No Partnership.** LYNX and County do not, in any way or for any purpose, become a partner of the other in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise.

17. **Waiver.** Neither the failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, nor any custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

18. **Time.** Time is of the essence of this Agreement.

19. **Governing Law and Venue.** Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court.

20. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

21. **Attorneys' Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, each party hereto shall bear its own costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration, bankruptcy or administrative proceeding, or at trial or on appeal.

22. **Counterparts and Facsimile Signatures.** This Agreement may be executed in two or more counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one original document. The parties may execute different counterparts of this Agreement, and, if they do so, the signatures pages from the different counterparts may be combined to provide one integrated document and taken together shall constitute one and the same instrument.

23. **Successors and Assigns.** LYNX shall not assign its right hereunder, without the prior written consent of the County. Failure to comply with this section may result in immediate termination of this Agreement.

24. **Force Majeure.** The time for the performance of LYNX's obligations under this Agreement, including without limitation LYNX's performance of the design, permitting and construction requirements set forth herein, will be extended for a period of time equal to any period of delay experienced by LYNX, or the number of days lost, due to any of the following ("Force Majeure"): strikes, civil riots or commotion, war, invasion, acts of terrorism, explosion, fire or other casualty, sabotage, theft, vandalism, Acts of God, labor disputes, unavailability of labor or materials, hurricane, tropical storm, tornado, or other adverse weather conditions, act or failure to act of governmental authorities other than LYNX (including failure or delay in issuing necessary approvals, permits, and licenses so long as LYNX is diligently pursuing its obligations hereunder), act or failure to act of third-party utility service providers, or other causes beyond the reasonable control of LYNX.

25. **Participation.** All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any party regardless of which party is deemed to have drafted the Agreement.

26. **Jury Trial.** THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION THEREWITH.

27. **No Third-Party Beneficiaries.** It is specifically agreed that this Agreement is not intended by any of the provisions of any part of this Agreement to establish in favor of any other party, the public or any member thereof, the rights of a third-party beneficiary, or to create or authorize any private right of action by any person or entity not a signatory to this Agreement to enforce this Agreement or any rights or liabilities arising out of the terms of this Agreement.

* * * * *

[SIGNATURE PAGE OF THE CONTRIBUTION AGREEMENT BETWEEN CENTRAL FLORIDA
REGIONAL TRANSPORTATION AUTHORITY AND ORANGE COUNTY, FLORIDA]

IN WITNESS WHEREOF, County and LYNX have caused this Agreement to be executed as of
the dates set forth below.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Jerry L. Demings

for Jerry L. Demings
Orange County Mayor

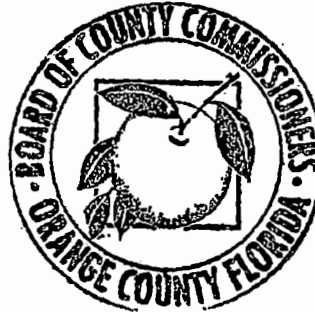
Date: OCT 27 2020

ATTEST:

Phil Diamond, CPA, County Comptroller,
As Clerk of the Board of County Commissioners

By: Katie Frisch


Date: OCT 27 2020



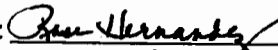
[SIGNATURE PAGE OF THE CONTRIBUTION AGREEMENT BETWEEN CENTRAL FLORIDA
REGIONAL TRANSPORTATION AUTHORITY AND ORANGE COUNTY, FLORIDA]

"LYNX"

CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY D/B/A
LYNX

By: 
Name: James E. Harrison, Esq., P.E.
Title: Chief Executive Officer
Dated: 09/22/2020

ATTEST:

By: 
Name: Rose Hernandez
Title: Executive Assistant
Date: 9.22.20

Reviewed as to Form:

This Agreement has been reviewed as to form by LYNX General Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

AKERMAN LLP

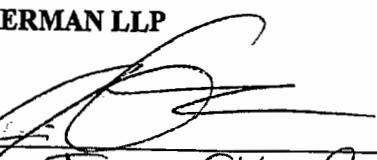
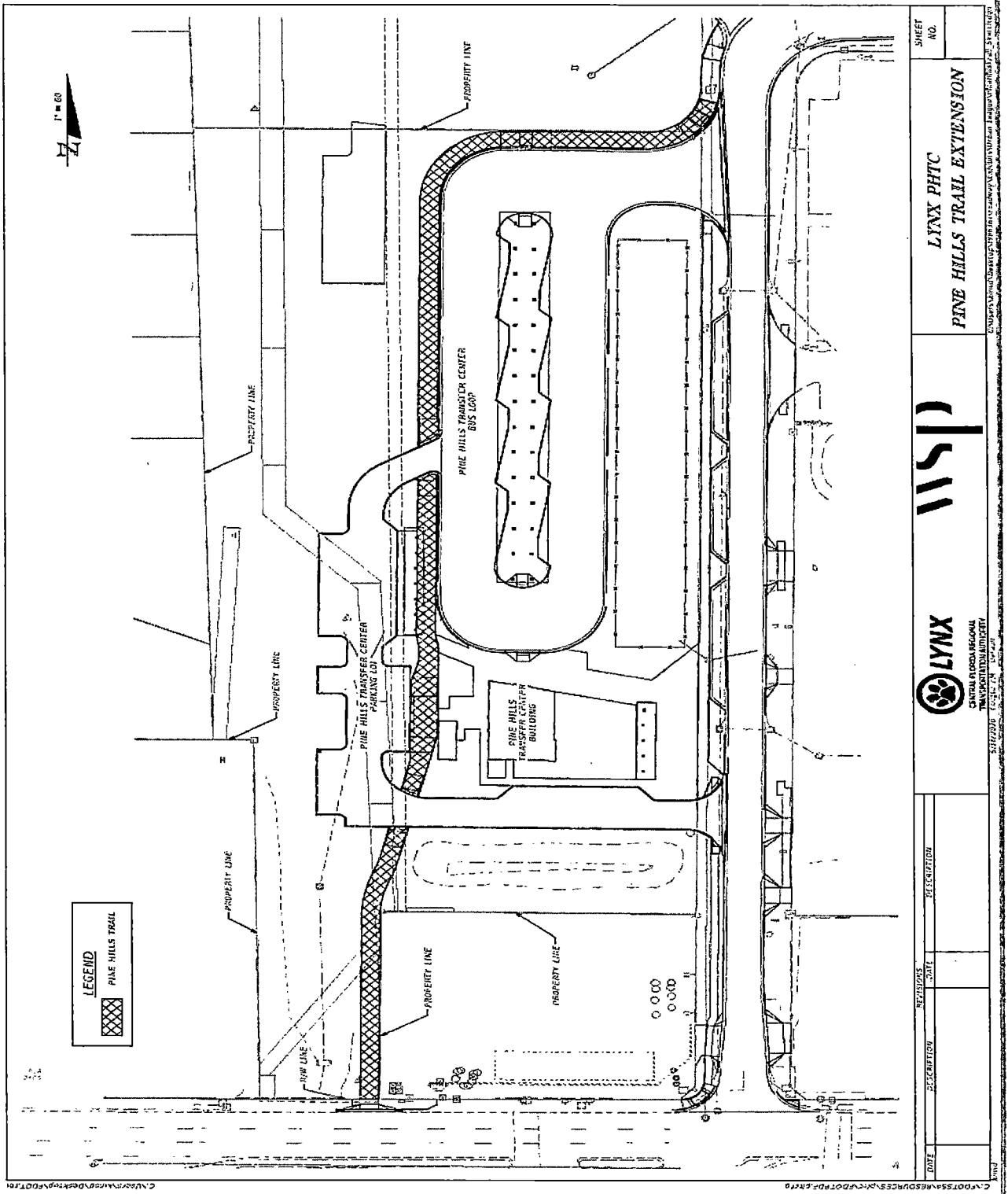
By: 
Name: James Goldsmith
Title: Partner
Date: 9/9/20

Exhibit "B"

Concept Plan





DATE		DESCRIPTION	REFERENCE	DATE	DESCRIPTION
 LYNX CENTRAL FLORIDA REGIONAL TRANSIT AUTHORITY 3500 W. UNIVERSITY BLVD., SUITE 100 ORLANDO, FL 32817 (407) 241-5000					
			LYNX PHTC PINE HILLS TRAIL EXTENSION		
SHEET NO.					

EXHIBIT "C"

Form Recreational Trail Easement

THIS IS A DONATION

Instrument:

Project:

RECREATIONAL TRAIL EASEMENT

This Grant of Easement ("Easement") made and given as of the ____ day of _____, 20____, by **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY D/B/A LYNX**, a body politic and corporate, created by Part III, Chapter 343, Florida Statutes, and whose principal address is 455 North Garland Avenue, Suite 500, Orlando, Florida 32801 ("Grantor"), to Orange County, Florida, a charter county and political subdivision of the State of Florida ("Grantee"), whose principal address is P.O. Box 1393, Orlando, Florida 32802-1393.

Property Appraiser's Parcel Identification Number:

a portion of:

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain real property located within Orange County, Florida, upon which it has constructed a bus transfer station ("Transfer Station Property"); and

WHEREAS, pursuant to that Contribution Agreement dated _____, 2020, entered into between Grantor and Grantee ("Contribution Agreement"), Grantor has also constructed on the Transfer Station Property, a 950-foot linear segment of the Pine Hills Trail ("Trail Segment"), a multipurpose public recreational trail; and

WHEREAS, pursuant to the Contribution Agreement, Grantor shall maintain maintenance responsibilities for the Trail Segment in accordance with, subject to the limitations contained in and for the term of the Contribution Agreement and any extensions thereto; and

WHEREAS, because the Trail Segment is a continuation of a public linear park accommodating pedestrians and non-motorized traffic, Grantor desires to convey to Grantee a perpetual recreational trail easement for pedestrian and non-motorized traffic on the Trail Segment, more particularly described in "**Exhibit A**," attached hereto.

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged; the parties hereto agree as follows:

Grantor hereby gives, grants and conveys unto Grantee a perpetual, non-exclusive easement on and within the Trail Segment depicted and legally described in "**Exhibit A**," attached hereto and incorporated herein by this reference, for the operation of a linear, public recreational trail for

pedestrian and non-motorized traffic with full authority to enter thereupon, as the Grantee may deem necessary. Grantee shall have the right to clear and keep clear all trees, undergrowth and other obstructions that may interfere with normal operation of the Trail Segment.

Grantor shall be solely responsible for the maintenance of the Trail Segment pursuant to, in accordance with, and subject to the limitations contained in the Contribution Agreement, as may be amended.

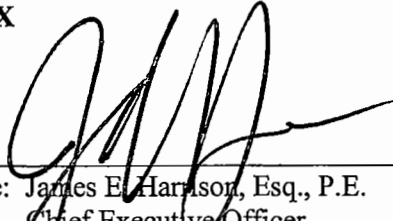
Grantor hereby reserves the rights of ingress, egress, and use of the Trail Segment at any time for any purpose which will not reasonably interfere with the rights conferred upon Grantee hereunder, provided that the Trail Segment shall be restored by Grantor to the extent such restoration is reasonably necessary and reasonably possible. However, Grantor shall not build, construct, or create, nor give its consent to any other person or entity to build, construct, or create any permanent physical improvements upon the Trail Segment. Nothing herein shall impair, terminate or restrict any pre-existing easements granted by Grantor on, over, under or within the Trail Segment, including, without limitation, that certain Easement in favor of Duke Energy LLC, recorded in Deed Book 732, Page 304, and Deed Book 807, Page 299, as affected by Supplemental Easement for Additional Facilities in Existing Right-of-Way recorded in Official Records Book 5962, Page 673, Public Records of Orange County, Florida, and, notwithstanding anything to the contrary set forth herein, this Easement, is subject in all respects to any such pre-existing easements.

This Easement is not intended to establish in favor of any other party, the public or any member thereof, the rights of a third-party beneficiary, or to create or authorize any private right of action by any person or entity other than Grantee to enforce this Easement or any rights or liabilities arising hereunder.

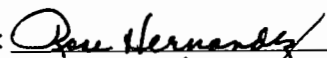
This Easement is subject to amendment or termination as may be agreed upon by Grantor and Grantee from time to time. The parties will meet to discuss in good faith whether to terminate this Easement should Grantee discontinue operations of the Pine Hills Trail.

IN WITNESS WHEREOF, the said GRANTOR has caused these presents to be executed in its name.

**CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY D/B/A
LYNX**

By: 
Name: James E. Harrison, Esq., P.E.
Title: Chief Executive Officer
Dated: 09/22/2020

ATTEST:

By: 
Name: Rose Hernandez

Title: Executive Assistant.

Date: 09.22.20

Reviewed as to Form:

This Easement has been reviewed as to form by LYNX General Counsel. This confirmation is not to be relied upon by any person other than LYNX or for any other purpose.

AKERMAN LLP

By: _____

Name: _____

Title: _____

Date: _____