



February 1, 2023

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

FROM: Kurt N. Petersen, Director, Office of Management & Budget

SUBJECT: Consent Agenda Item for February 21, 2023
Pine Hills Transfer Station Contribution Agreement 23-C16 by and
between Central Florida Regional Transportation Authority d/b/a
LYNX and Orange County, Florida

Board approval and execution is requested for Pine Hills Transfer Station Contribution Agreement 23-C16 by and between Central Florida Regional Transportation Authority d/b/a LYNX and Orange County, Florida. This agreement is to provide \$600,000 toward the construction of the Pine Hills Transfer Station to be located at the intersection of Belco and Silver Star Road in Orange County, Florida. The County's funding is coming from the American Rescue Plan Act as approved by the Board on July 14, 2022. The total cost for the Pine Hills Transfer Station is \$8,835,264.

ACTION REQUESTED: Approval and execution of Pine Hills Transfer Station Contribution Agreement 23-C16 by and between Central Florida Regional Transportation Authority d/b/a LYNX and Orange County, Florida relating to the providing a construction contribution for the Pine Hills Transfer Station to be located at the intersection of Belco and Silver Star Road in Orange County, Florida in the amount of \$600,000.

KP

Attachments

BCC Mtg. Date: February 21, 2023

**Pine Hills Transfer Station Contribution Agreement
23-C16**

by and between

**CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX
(LYNX)**

and

ORANGE COUNTY, FLORIDA

relating to the providing a construction contribution for the Pine Hills Transfer Station to be located at
the intersection of Belco and Silver Star Road in Orange County, Florida

October 18, 2022

CONTRACT NO. 23-C16
CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (“Agreement”) is made and entered into as of the Effective Date (as hereinafter defined) 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, 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 intends to construct, operate and maintain an eight-bay transfer facility and an administrative building that will house driver restrooms and lounge, customer service and security, to be located at the intersection of Belco and Silver Star Road (the “Project”), which is reflected on the sketch attached hereto as **Exhibit “A”** (the “Sketch”); and

WHEREAS, the total budget for the Project is \$8,835,264, which is to be funded by multiple funding sources including Federal 5307, a Ladders of Opportunity grant, an FDOT Intermodal Development grant, Orange County Parks and Recreation, in-kind services and a local match;

WHEREAS, County has agreed to make a one-time contribution to LYNX for construction of the Project; and

WHEREAS, LYNX and County desire to set forth their mutual understanding of the terms and conditions of their agreement as set forth herein.

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 Contribution.** County hereby agrees to provide a one-time payment to LYNX in the amount of Six Hundred Thousand and no/100 Dollars (\$600,000)(“Contribution”) for the construction of the Project (as determined by LYNX). The County’s Contribution shall be paid to LYNX on or before December 31, 2024 once construction has started. For the purpose of invoicing, invoices and related matters will be sent to ORANGE COUNTY at the following address:

ORANGE COUNTY
c/o Kurt Petersen, Director, Office of Management & Budget
201 South Rosalind Ave. 3rd Floor
Orlando, FL 32802

LYNX shall use the Contribution only for the costs associated with the construction of the Project.

3. **LYNX Obligations.** 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. **Procurement.** LYNX shall follow federal procurement procedures in compliance with 2 CFR 200.318-200.327.

5. **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.

6. **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.

7. **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. This provision shall survive termination of this Agreement.

8. **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 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.

9. **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: Leonard Antmann
	Chief Financial Officer
	455 North Garland Avenue, Suite 500
	Orlando, Florida 32801
	Telephone: (407) 254-6125
	Email: LAntmann@golynx.com

With a copy to: Central Florida Regional Transportation Authority d/b/a/ LYNX
Attn: Carrie L. Sarver, Esq., B.C.S
455 North Garland Avenue
Orlando, Florida 32801
Telephone: (407) 254-6037
Email: CSarver@golynx.com

COUNTY: Orange County, Florida
Attn: Kurt Petersen, Director, Office of Management & Budget
201 South Rosalind Avenue, 3rd Floor
Orlando, Florida 32801

With a copy to:

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

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.

10. **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”). This Agreement shall remain in effect until December 31, 2024.

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

12. **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.

13. **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 venture or a member of a joint enterprise.

14. **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.

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

16. **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.

17. **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.

18. **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.

19. **Relationship of Parties.** This Agreement is solely for the benefit of the parties executing the Agreement, and no rights are intended, nor shall any rights accrue, to any third party unless expressly provided in this Agreement.

20. **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.

21. **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.

22. **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.

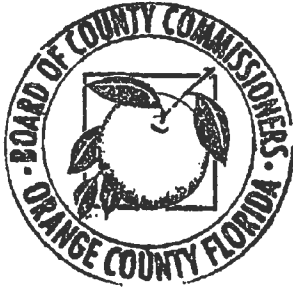
23. **Jury Trial.** THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION THEREWITH.

24. **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: February 21, 2023

ATTEST:

Phil Diamond, CPA, County Comptroller,

As Clerk of the Board of County Commissioners

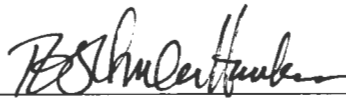
By: *Terrijo Ann - Kinney*
Deputy Clerk

Date: February 21, 2023

[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: Tiffany Homler Hawkins
Title: Interim Chief Executive Officer
Dated: 1/19/23

ATTEST:

By: Rose Hernandez
Name: Rose Hernandez
Title: Executive Assistant
Date: 1-29-2023

Reviewed as to Form:

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.

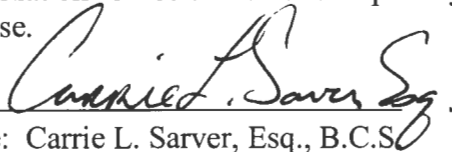
By: 
Name: Carrie L. Sarver, Esq., B.C.S.
Title: Senior In-House Counsel
Date: 1/17/23

EXHIBIT A – SKETCHES #1 & #2
ATTACHED Page 9 & 10

EXHIBIT A – SKETCH #1



EXHIBIT A – SKETCH #2

