



November 18, 2021

TO:

Mayor Jerry L. Demings -AND-County Commissioners

FROM: Carla Bell Johnson, AICP Assistant County Administrator County Administrator's Office

CONTACT: 407-836-5610

SUBJECT: November 30, 2021 – Consent Item LYNX Bus Service Agreement for service within the International Drive Community Redevelopment Area (CRA)

During the series of Board work sessions leading up to the adoption of the International Drive CRA Redevelopment Plan Update, the Board expressed a desire to incorporate improvements to LYNX bus service that would enhance access for citizens who work within the International Drive area. At the July 15, 2021 budget work session and the August 24, 2021 Board meeting, staff reviewed proposed enhancements that were evaluated by LYNX in response to this request. The Board and Community Redevelopment Agency subsequently approved \$1.5 million of funding in the International Drive CRA FY 21-22 budget for this purpose.

The proposed enhancements to LYNX service within the International Drive CRA are incorporated into a larger package of LYNX system changes that are focused on improving workforce transit access to the tourism corridor and enhancing overall system efficiencies. This system-wide package of improvements will occur as part of the LYNX service changes that were recently approved by the LYNX Board of Directors, which will begin on December 12, 2021. The improvements within the International Drive CRA relate specifically to Links 8, 37, 38, and 42 and result in extended hours of operation to better match hospitality work shifts and increased frequency of service. LYNX completed an extensive public participation process during the months of September and October which included three workshops/public hearings. The total cost for these service enhancements is \$1,304,178.

The bus service agreement reflects these increased services and the costs attributable to the International Drive CRA. This agreement has been reviewed by the County Attorney's Office.

ACTION REQUESTED:

D: Approval and execution of Bus Service Agreement 19-C62 by and between Central Florida Regional Transportation Authority d/b/a LYNX and Orange County, Florida relating to the providing of bus service in the International Drive Community Redevelopment Area of Orange County, Florida. Districts 1 and 6.

Attachment

c: Byron W. Brooks, AICP, County Administrator Jeffrey Newton, County Attorney Darren Gray, Deputy County Administrator Kurt Petersen, Manager, Office of Management and Budget Renzo Nastasi, AICP, Manager, Transportation Planning Division Lucas Boyce, Assistant to the County Administrator APPROVED BY ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

BCC Mtg. Date: Nov. 30, 2021

BUS SERVICE AGREEMENT 19-C62

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

December 12, 2021

BUS SERVICE AGREEMENT

THIS BUS SERVICE AGREEMENT (the "<u>Agreement</u>") made and entered as of this ____ day of December 2022, by and between:

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX (hereinafter referred to as "<u>LYNX</u>"), 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 "<u>ORANGE COUNTY</u>") (hereinafter collectively referred to as "Parties").

WITNESSETH:

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 within the International Drive Community Redevelopment Area 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:

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.
<u>Cost of Bus</u> <u>Service</u>	Shall mean the actual cost incurred by LYNX to provide the Bus Service, which for the LYNX fiscal year ending September 30, 2022, will be based on an estimated hourly rate of \$80.68 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.

- Shall mean the revenue derived from LYNX from passengers **Farebox Revenue** utilizing the Bus Service. In the event any such Farebox Revenue is derived from services provided by LYNX outside of the Service Area, then such revenue shall not be included as Farebox Revenue for purposes of this Agreement. Shall mean the Florida Department of Transportation. FDOT Shall mean the Federal Transit Administration. FTA **Monthly Cost of** 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 **Bus Service** Service for each and every month during the term of this Agreement. Shall mean the actual Farebox Revenue received from LYNX for the **Monthly Farebox** Revenue Bus Service during 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. Shall mean the net cost to provide the Bus Service on a monthly basis, Net Monthly Cost which for any particular month is equal to the Monthly Cost of Bus of Bus Service Service for that month less the Monthly Farebox Revenue for that same month. Service Area Shall mean the area indicated in **Exhibit "A"** attached hereto. Shall mean the frequency, times, and stops for the Bus Service to be Service Schedule provided by LYNX, as set forth and described in paragraph 5 below.
- 2. <u>**PROVIDING OF BUS SERVICE**</u>. Pursuant to the terms and conditions of this Agreement and in consideration of the Monthly 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. <u>**TERM**</u>. This Agreement shall become effective on December 12, 2021 (the "<u>Commencement</u> <u>**Date**</u>") and shall, except as otherwise set forth herein or unless earlier terminated in writing by either party, be completed on or before September 30, 2022 (the "<u>Expiration Date</u>"), which is the funding period for providing the Bus Service as set forth in <u>Exhibits "A & B"</u> 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. **<u>TERMINATION.</u>**

a. <u>Termination at Will</u>. This Agreement may be terminated by either party upon no less than thirty (30) calendar days' notice to the other party, 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. <u>Termination Due to Lack of Funds</u>. 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. <u>Termination for Breach</u>. 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's or LYNX's right to remedies at law or to damages.

5. <u>SCHEDULE OF BUS SERVICE</u>. Attached hereto as <u>Exhibit "B"</u> 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). 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 the ORANGE COUNTY an accounting in reasonable detail sufficient to show for said month the actual Monthly Cost of Bus Service to be paid. The ORANGE COUNTY shall make said monthly payment to LYNX within thirty (30) days after the receipt of the invoice from LYNX.

b. For the purpose of invoicing, invoices and related matters will be sent to ORANGE COUNTY at the following address:

ORANGE COUNTY c/o Carla Bell Johnson, AICP, Assistant County Administrator P.O. Box 1393 Orlando, FL 32802-1393

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 Monthly Payments set forth above.

d. Nothing contained in this Agreement shall obligate LYNX to provide for the Bus Service using 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 Monthly 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. <u>SECURITY DEPOSIT</u>. No security deposit is required of ORANGE COUNTY under this Agreement.

8. <u>ADVERTISING</u>. 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. **<u>NON-ASSIGNABILITY</u>**. 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. <u>NO THIRD PARTY BENEFICIARY</u>. 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:	James Harrison, Esq P.E., Chief Executive Officer 455 North Garland Avenue Orlando, Florida 32801
Copy to:	Carrie L. Sarver, Esq., B.C.S., Senior Staff Attorney 455 North Garland Avenue Orlando, Florida 32801-1518
ORANGE COUNTY:	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. **<u>GOVERNING LAW</u>**. 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. <u>Sovereign Immunity</u>. 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. <u>Time of Essence</u>. 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. <u>Legal Obligations</u>. This Agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

e. <u>No Waiver</u>. 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. <u>Benefits of Service</u>. The Monthly 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. <u>No Oral Modification</u>. 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. <u>Severability</u>. 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. <u>Counterparts</u>. 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. <u>Adjustment of Bus Routes</u>. 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. <u>Capital Requirements (i.e., Buses</u>). 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.

1. **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 Monthly Payments, LYNX could seek to enforce that payment but, at its option, could also reduce the bus service specifically within the Service Area.

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 "B."</u>

n. <u>Independent Contract 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.

16. **BOARD APPROVAL.** This Agreement is subject to the approval by the LYNX Board of Directors.

17. <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 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, Board of 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, Board of County Commissioners.

IN WITNESS WHEREOF, the Parties have hereunto executed this Bus Service Agreement the day and year first above written.

Attest:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



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

Deputy Clerk

By:

By:

Jerry L. Demings Orange County Mayor

Date: November 30, 2021

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By: Name: James F. Harrison, Esq., P.E. Chief Executive Officer Title:

12/8 Date

This Agreement has been reviewed as to form by LYNX Senior Staff Attorney. 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 Staff Attorney 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 50 Downtown Orlando/Magic Kingdom Express
- Link 57 John Young Parkway
- Link 111 SeaWorld/Orlando Int'l Airport

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)

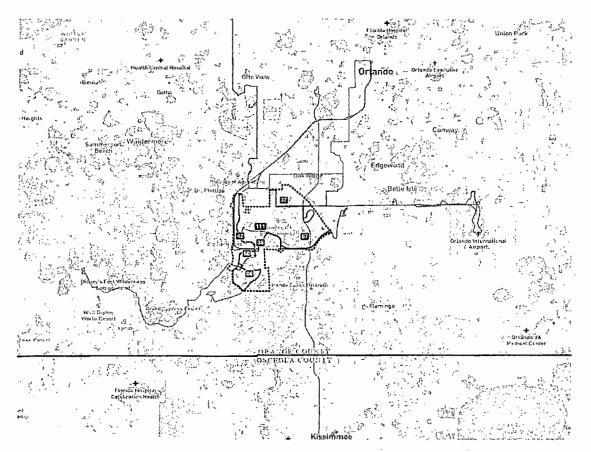
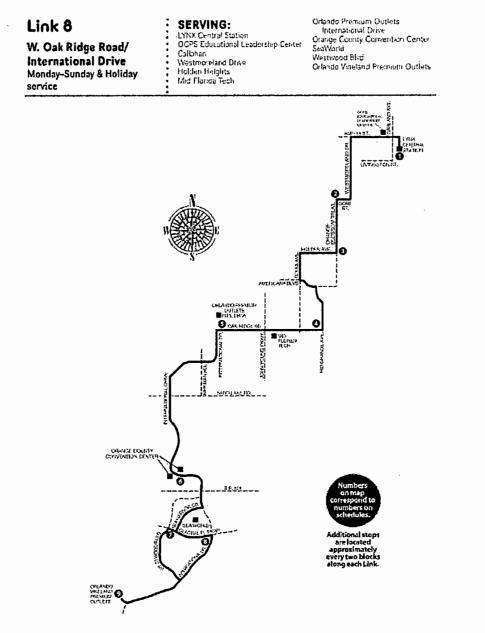


EXHIBIT "B"

Description of Bus Services

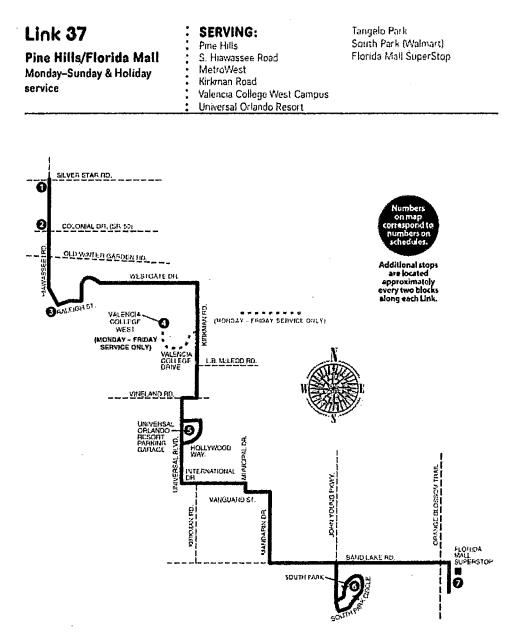
Link 8 - West Oak Ridge Road/International Drive

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.



Link 37 – Pine Hills/Florida Mall

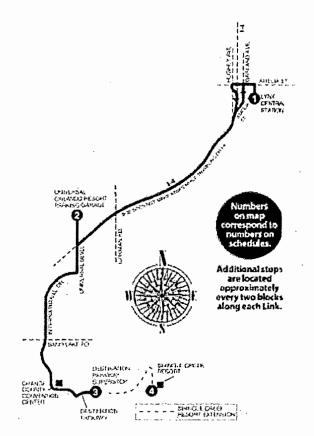
Operates between Silver Star Road/Hiawassee Road and Florida Mall Superstop via Hiawassee Road, Raleigh Street, Westgate Drive, Kirkman Road, Vineland Road, Universal Blvd., International Drive, Municipal Drive, Vanguard Street, Mandarin Drive, Sand Lake Road, John Young Parkway, and South Park Circle



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.

Link 42 International Drive/Orlando International Airport Monday-Sunday & Holiday service	SERVING: Destination Parkway SuperStop Orange County Convention Center Orlando Premium Outlets International Dr. W. Oak Ridge Road	Mid Florida Tech Orlando Central Park Florida Mall Orlando International Airport NeighborLink 641 Sand Lake SunRail Station
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Additional stops are located approximately every two blocks along each Link.

Exhibit C Description of Funding

Link Services	Hours	Amount
Link 8	985	\$79,506
Link 37	2,053	\$165,627
Link 38	11,813	\$953,109
Link 42	1,313	\$105,936
	16,165	\$1,304,178

Net Funding Request

\$1,304,178

FY2021 Billing Schedule

1 12021 Duing Scheume	
October-21	\$0
November-21	\$0
December-21	\$88,644
January-22	\$135,059
February-22	\$135,059
March-22	\$135,059
April-22	\$135,059
May-22	\$135,059
June-22	\$135,059
July-22	\$135,059
August-22	\$135,059
September-22	\$135,062

Total Funding for FY2022

\$1,304,178