

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Seminole County and the Central Florida Regional Transportation Authority (LYNX) Intergovernmental Agreement for the Purchase of Mass Transit Infrastructure

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Cathleen Consoli **EXT.** 7377

Agenda Date: <u>10/12/04</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/>
Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute the attached Intergovernmental Agreement between Seminole County and the Central Florida Regional Transportation Authority (LYNX) for the purchase of mass transit infrastructure using the County's One Cent Sales Surtax Funds as agreed upon during the FY 2003/04 budget process.

District: County Wide

Cathleen Consoli, Senior Planner

BACKGROUND:

During the FY 2003/04 budget process, the Board of County Commissioners agreed to fund LYNX from the Infrastructure Sales Surtax fund for the acquisition of mass transit capital infrastructure, such as buses, to be used for the benefit of the citizens of Seminole County. This amount represents the funding gap not covered by other revenues, such as the 9th cent local option gas tax, for payment to LYNX.

The original amount considered for funding was in the range of \$250,000.00. This amount has been reduced to \$140,309.00 because LYNX no longer required revenue for CAD-AVL (communication) equipment.

For your information, infrastructure sales tax money for transit was appropriated in the first infrastructure sales tax referendum. If approved, \$6,145,908 remains in the Infrastructure Sales Surtax fund after this deduction.

STAFF RECOMMENDATION:

Staff recommends approval and execution of the agreement.

Attachments: Intergovernmental Agreement

Reviewed by:	
Co Atty:	<u>[Signature]</u>
DFS:	
Other:	<u>[Signature]</u>
DCM:	<u>[Signature]</u>
CM:	<u>[Signature]</u>
File No.	<u>cpdp03</u>

**INTERGOVERNMENTAL AGREEMENT BETWEEN
SEMINOLE COUNTY AND CENTRAL FLORIDA REGIONAL TRANSPORTATION
AUTHORITY (LYNX) FOR THE PURCHASE OF MASS TRANSIT INFRASTRUCTURE**

THIS INTERGOVERNMENTAL AGREEMENT, is made and entered into this ___ day of _____, 20___, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is the Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY" and the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate agency of the State of Florida created in Section 343.63, Florida Statutes, whose address is 445 West Amelia Street, Suite 800, Orlando, Florida 32801-1128, hereinafter referred to as "LYNX".

W I T N E S S E T H:

WHEREAS, in April and May of 1991 the COUNTY entered an Interlocal Agreement with four (4) municipalities within Seminole County which Agreement is entitled "Seminole County Transportation Plan Interlocal Agreement" which relates to transportation improvement projects to be funded with local government infrastructure sales surtax proceeds; and

WHEREAS, transit system improvements are listed as a transportation improvement project eligible to be accomplished with local government infrastructure sales surtax proceeds; and

WHEREAS, it is reasonable and appropriate for LYNX to accomplish the needed transit improvements pursuant to the 1991 Interlocal Agreement which may be accomplished through the purchase of infrastructure expenditures which will provide or contribute to an appropriate mass transit service; and

WHEREAS, the COUNTY and LYNX desire to cooperate with regard to providing mass transit services for the benefit of the citizens of Seminole County and require a mechanism to provide funds from the local government infrastructure sales surtax consistent with the terms of the

1991 Interlocal Agreement which are or will be on deposit with the COUNTY to be transferred to LYNX on a reimbursement basis in order that LYNX can effectively provide mass transit services to and for the benefit of the citizens of Seminole County by means of the procurement of buses; and

WHEREAS, this Agreement serves a public purpose and is authorized pursuant to the provisions of Chapters 125, 163, 166, and 343, Florida Statutes, and other applicable law:

NOW, THEREFORE, in consideration of the premises and the promises, covenants, agreements, and commitments contained herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged as to both parties, the parties agree as follows relative to the funding of mass transit transportation services through the acquisition of capital infrastructure such as buses and portions of buses i.e. engines and fare boxes for LYNX.

SECTION 1. RECITALS. The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

SECTION 2. TERM. This Agreement shall become effective upon full execution by the governing bodies of the COUNTY and LYNX and shall remain in effect until the infrastructure which is the subject of this Agreement is disposed of in accordance with the provisions of Federal and State law. LYNX shall use the subject infrastructure for the use and benefit of the citizens of Seminole County for the provision of mass transit services for a period of at least five (5) years from the date of procurement.

SECTION 3. FINANCIAL OBLIGATION OF THE COUNTY. The total financial obligation of the COUNTY under this Agreement is that the COUNTY shall provide LYNX with a one time payment of ONE HUNDRED FOUR

THOUSAND THREE HUNDRED FOUR AND NO/100 DOLLARS (\$104,304.00) for legitimate and documented expenses relating to the purchase of buses and portions of buses i.e. engines and fare boxes to be used for the benefit of the citizens of Seminole County consistent with the terms of this Agreement. Said funds shall be solely and exclusively derived from the COUNTY's infrastructure sales surtax and shall be utilized for the sole purpose of purchasing buses for the new operating facility and no other collateral program or project. Other agreements between the parties may be entered relative to operational and maintenance expenses.

SECTION 4. STATUS OF LYNX TRANSPORTATION PROGRAMS AND PROJECTS.

For all purposes the procurement of the aforestated mass transit infrastructure shall be a project of LYNX. LYNX shall determine the design and manufacturing standards for the buses and portions of buses i.e. engines and fare boxes consistent with Federal and State law and the terms of this Agreement. The parties desire to cooperate in the successful implementation of the procurement and utilization of mass transit infrastructure but the COUNTY's actions pursuant to this Agreement and all other matters that the COUNTY may accomplish relative to the procurement of buses shall be for the COUNTY's purposes and not LYNX's. The COUNTY shall not be deemed a partner or co-venturer as to the procurement of the buses by LYNX. LYNX shall implement the procurement of commuter vans or transit shelters in a manner consistent with Federal and State law. The COUNTY shall, likewise, have no obligations relative to the title-ownership, maintenance, security, or control of the buses and portions of buses.

SECTION 5. LYNX's DUTIES. In addition to all other covenants, obligations, duties, and responsibilities set forth herein, during the course of this Agreement LYNX shall:

(a) provide for any and all services necessary for the procurement, operation, maintenance, security, and control of the buses and to use the buses as LYNX determines is necessary and appropriate from an operational point of view, within Seminole County; and

(b) administer and supervise matters relating to or pertinent to the buses and portions of buses, i.e., engines and fare boxes; and

(c) obtain any and all necessary titles, lien waivers, or releases and all warranties in connection with payment requests or disbursements; and

(d) furnish a full and final accounting of all costs and disbursements in accordance with generally accepted accounting principles; and

(e) make any and all timely and proper payments of accurate and payable valid invoices received from any and all vendors.

SECTION 6. COUNTY'S DUTIES. During the course of this Agreement the COUNTY shall:

(a) review full and final accounting costs and disbursement records delivered by LYNX to the COUNTY and notify LYNX within fifteen (15) business days of any objections to same; and

(b) provide LYNX with a one time payment for Fiscal Year 2003/04 of ONE HUNDRED FORTY THOUSAND THREE HUNDRED NINE AND NO/100 DOLLARS (\$140,309.00) to be made on or before December 31, 2004.

SECTION 7. REMEDIES. Each party shall have any and all remedies as permitted by law; provided, however, that the parties agree to provide for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Agreement.

SECTION 8. FORCE MAJEURE. In the event any party hereunder fails to satisfy a requirement imposed in a timely manner, due to a hurricane,

flood, tornado, or other Act of God or force majeure, then said party shall not be in default hereunder.

SECTION 9. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and assigns of the parties.

SECTION 10. ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written approval of the other.

SECTION 11. PUBLIC RECORDS. LYNX shall allow public access to all documents, papers, letters, or other materials which have been made or received by LYNX in conjunction with this Agreement or the procurement of the mass transit infrastructure which is the subject hereof.

SECTION 12. RECORDS AND AUDITS. LYNX shall maintain in its place of business all books, documents, papers, and other evidence pertaining to work performed under this Agreement. Such records shall be available at LYNX's place of business at all reasonable times during the term of this Agreement.

SECTION 13. NOTICES.

(a) Whenever either party desires to give notice unto the other, notice may be sent to:

For COUNTY: County Manager
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

copy to: Principal Planner
Planning Division
1101 East First Street
Sanford, Florida 32771

For LYNX: Linda Watson, Executive Director
Central Florida Regional
Transportation Authority
445 W. Amelia Street, Suite 800
Orlando, Florida 32801-1128

(b) Either of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices or invoices. All notices shall be effective upon receipt.

SECTION 14. INDEMNIFICATION. To the extent provided under State law, LYNX hereby agrees to fully indemnify, save, and hold the COUNTY harmless from and against any and all damages, expenses, losses, claims, injuries and liabilities arising or resulting from or in connection with LYNX or its officers, employees, agents, successors' or assigns' actions or activities relating in any way to the procurement, operation, use, control, security or maintenance of commuter vans, transit shelters or engineering services, and any and all claims and actions brought by third parties resulting from or arising in connection with the commuter vans, transit shelters, or engineering services. LYNX agrees to hold harmless, indemnify, and defend the COUNTY, its commissioners, officers, employees and agents against any and all claims, losses, damages, or lawsuits for damages, arising in any way whatsoever from, allegedly arising from, or related to the procurement, operation, use, control, security, or maintenance of the commuter vans, transit shelters, or engineering services for the LYNX operating facility in any way related to the commuter vans, transit shelters or engineering services. To the extent required by law, if specific consideration for the indemnification provided herein is required to be given by the COUNTY to LYNX then ONE AND NO/100 DOLLAR (\$1.00) of the value for the consideration set forth in this Agreement shall be deemed to be such specific consideration. LYNX acknowledges the adequacy and sufficiency of said specific consideration. LYNX and its successors and assigns covenant not to sue the COUNTY for any act or omission relating in any way to the procurement of the commuter vans, transit shelters, or

engineering services or the use of the commuter vans, transit shelters, or engineering services.

SECTION 15. CONFLICT OF INTEREST. LYNX agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

SECTION 16. EQUAL OPPORTUNITY EMPLOYMENT. LYNX agrees that it will not discriminate against any contractor, employee, or applicant for employment or work under this Agreement because or on account of race, color, religion, sex, age, or national origin and will take affirmative steps to insure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin. This provision shall include, but not be limited to, the following: retention; award of contracts; employment; upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; sexual harassment and selection for training, including apprenticeship.

SECTION 17. COMPLIANCE WITH LAWS AND REGULATIONS. In performing under this Agreement, the parties shall abide by all laws, statutes, ordinances, rules, and regulations pertaining to or regulating the performance set forth herein, including those now in effect and hereafter adopted. Any violation of said laws, statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

SECTION 18. EMPLOYEE STATUS.

(a) Persons employed or retained by LYNX in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY's officers and employees either by operation of law or by the COUNTY.

(b) LYNX assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, and Federal, State and local employment taxes, if any, attributable to LYNX personnel or contractors, and agrees to indemnify and hold the COUNTY harmless from any responsibility for same.

SECTION 19. CLOSE OUT. Upon LYNX determining that full utility of the buses, fare boxes, staff cars, and computer aided dispatch automated location devices procured with the funds that are the subject hereof has been completed in accordance with this Agreement, LYNX agrees to dispose of the subject buses, fare boxes, staff cars, and computer aided dispatch automated location devices in accordance with the provision of Federal and State laws and disburse to the COUNTY the sums so received less reasonable disposal costs; provided, however, that such sums may be used to provide for the payment of operational and maintenance expenses in other agreement(s) of the parties. Should any buses, fare boxes, staff cars, and computer aided dispatch automated location devices maintain their legal and practical utility five (5) years after their date of procurement, LYNX may continue to use said items for the benefit of the residents of Seminole County or return said items to the COUNTY, at the discretion of the COUNTY.

SECTION 20. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by a written

instrument equal in dignity herewith and executed by the parties to be bound thereby.

SECTION 21. COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

SECTION 22. HEADINGS. All sections and description headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY

Witness

By: _____
LINDA WATSON, Executive Director

Witness

Date: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida

By: _____
DARYL G. MCLAIN, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney
AC/gn 8/11/04 /lpk 8/18/04 9/9/04
Interlocal w lynx