

ITEM # 47

SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM

SUBJECT: LYNX Service Agreement - FY2006

DEPARTMENT: Planning & Development DIVISION: Planning

AUTHORIZED BY: Dan Matthys CONTACT: Dick Boyer EXT. 7382

Agenda Date 12/20/05 Regular  Consent  Work Session  Briefing   
Public Hearing - 1:30  Public Hearing - 7:00

**MOTION/RECOMMENDATION:**

Approve and authorize Chairman to execute "Service Funding Agreement between Seminole County and LYNX For Fiscal Year 2005-2006"

District: Countywide

**BACKGROUND:**

LYNX has requested the County sign a service agreement agreeing to appropriate \$3,806,677 to LYNX for delivery of fixed-route bus and ADA paratransit services during Fiscal Year 2005-2006. For the prior fiscal year, five of the eight LYNX partners signed such an agreement (see list on following page). This agreement does not address any separate capital cost items such as bus shelters, new buses, or rail - either light or commuter.

In the past, the County has periodically discussed the use of alternative service providers and, to maintain that option, declined to sign such an agreement. At this time, the County is not considering alternative options.

The Board appropriated approximately 95% of the funding from the 9<sup>th</sup> Cent Fuel Tax Fund and 5% from the Infrastructure Tax Fund. On the following page is a list of LYNX partners who signed agreements in FY2005.

**STAFF RECOMMENDATION:** Staff recommends execution of the agreement.

Reviewed by:  
Co Atty: KL  
DFS: \_\_\_\_\_  
OTHER: 3  
DCM: \_\_\_\_\_  
CM: RB  
File No. CPDP02

## **Signatory LYNX Partners**

- 1 Signed agreement for FY 2005:
  - a Orange County
  - b Osceola County
  - c City of Orlando
  - d City of Altamonte Springs
  - e City of St. Cloud
- 2 Did not sign but paid fully:
  - a City of Sanford
  - b City of Kissimmee
  - c Seminole County

## **ATTACHMENT(S):**

- Service Funding Agreement

**SERVICE FUNDING AGREEMENT  
BETWEEN SEMINOLE COUNTY AND LYNX  
FOR FISCAL YEAR 2005-2006**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between SEMINOLE COUNTY, a charter county and a political subdivision of the State of Florida (hereinafter the "County"), and the CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY, a body politic and corporate created pursuant to Part II, Chapter 343, Florida Statutes, (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 County recognizes the need to provide public transit services in an efficient manner and acknowledges the benefits of increased ridership on the regional public transit system; and

WHEREAS, increasing traffic congestion and continued population growth require an efficient and convenient public transit service; and

WHEREAS, an efficient and convenient public transit service offers a viable alternative to private automobile travel; and

WHEREAS, LYNX desires to provide mass transit services within the County, and

WHEREAS, the County desires to provide LYNX with funding to support the operation of the public transportation service within the County.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the County and LYNX agree as follows:

1. RECITALS. The County 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. LYNX SERVICE AND REPORTING REQUIREMENTS. In consideration of the funding provided by the County LYNX agrees to provide the services and reports specified in this agreement.

2.01 SERVICE REQUIREMENTS. Each service is associated with an allocation of the total amount of money to be paid by the County to LYNX under this agreement. The intent of the parties is that LYNX will provide at least the amount of service associated with each budget allocation associated with the specific service. The parties may shift dollars from one type of service to another in order to balance the amount of money paid under this agreement with the services provided. Periodically the level of services shall be reconciled with the amount of money allocated to the services. At any time that the balance of the money remaining to be paid is projected to be significantly more or less than the amount required to pay for the balance

of the remaining services, the parties shall meet and agree to an adjustment to the level of service to bring the budget allocations closer to the actual requirements. Such adjustments to the levels of service shall be documented in writing, however, need not be the subject of an amendment to this agreement. In no event shall the County be obligated to pay any additional money in the absence of a written amendment to this agreement.

2.02 REPORTING REQUIREMENTS. Beginning on February 1, 2006 and on a quarterly basis thereafter, LYNX shall provide the County a written performance report reflecting the operations of the prior quarter (collectively referred to as "Performance Measures"). Each quarterly report will include the following items:

- a. A route map, and schedule for each route operated in the County.
- b. The actual aggregate ridership by transportation mode (Fixed Route bus, Lymmo, Laser, A+ Links, Van Plan and special shuttles) in the form of the official LYNX Monthly Ridership Reports.
- c. Operational Service Characteristics Report for current services contemporaneous updates.
- d. A comparison of actual revenue and expenditures to budgeted revenues and expenditures with explanations for variances that exceed Fifty Thousand Dollars (\$50,000).
- e. LYNX Route Performance report which reports and ranks each route monthly based on the following:
  - \* Subsidy per passenger trip
  - \* Passengers per trip
  - \* Passengers per revenue hour
  - \* Passengers per revenue mile
  - \* Percent farebox return (percent of operating cost recovered through farebox)
- f. Current and contemporaneous versions of the LYNX Regional Model
- g. Scheduled and actual Revenue Miles
- h. Scheduled and actual Revenue Hours
- i. Schedule of unanticipated extraordinary expenses for the prior quarter
- j. Changes to authorized staffing
- k. Any other information the County reasonably requests
- l. An historical record describing route changes including, but not limited to:
  - i. Addition of Route(s)
  - ii. Elimination of Route(s)
  - iii. Combination of Routes
  - iv. Addition of Evening Service
  - v. Addition of Weekend Service
  - vi. Other Route Scheduling Changes
  - vii. Running Time Adjustments

Quarterly reporting periods shall end on December 31, March 31, June 30, and September 30, and said reports shall be submitted to the County's Transportation Planning Department after the end of each quarter.

On an annual basis, within thirty days of receipt, LYNX shall provide the County 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.

3. FISCAL YEAR 2005-2006 FUNDING

- a. The County agrees to appropriate **\$3,806,677** to LYNX for Fiscal Year 2005-2006. The funding is to be utilized by LYNX to provide public transit services in accordance with this Agreement. Such funds appropriated in the County's FY 2005-2006 Budget shall be paid in twelve (12) equal monthly installments which shall be due and payable on the first of each month. The first such payment shall be made no sooner than October 1, 2005.
- b. LYNX agrees to utilize the funds received from the County in accordance with the terms of this Agreement and to take all reasonable and necessary actions in a timely manner to initiate, implement, and operate the Public Transportation services in accordance with the terms of this Agreement. LYNX further agrees to demonstrate such initiation, implementation, and completion of such improvements by submitting reports to the County as defined in Section 2 of this Agreement.

4. EFFECTIVE DATE. The effective date of this Agreement is October 1, 2005. The term of this Agreement is one (1) year from its effective date.

5. INTERPRETATION. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

6. 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, this Agreement was drafted jointly by all parties, 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.

7. MISCELLANEOUS.

- a. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supercedes all previous discussions, understandings, and agreements. Amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
- b. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or constitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.
- c. The parties acknowledge that they have freely and voluntarily entered into this Agreement and that each party has been given the opportunity to receive the advice of independent legal counsel for all negotiations in connection with this Agreement.
- d. In any action or proceeding between the parties arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover all costs of such action or proceeding incurred by it, including reasonable attorneys' fees, at trial and on appeal.
- e. Time shall be of the essence of this Agreement.

8. CONTROLLING LAWS.

- a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the County now in effect and those hereinafter adopted.
- b. The location for settlement of any claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange County, Florida.
- c. 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.

9. BINDING NATURE OF AGREEMENT. This Agreement shall be binding only between the County and LYNX, and inure to the benefit of the successors or assigns of the parties.

10. NOTICES. All notices, consents, approvals, waivers, and deletions which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficient only when mailed by certified mail, first class postage affixed, addressed as follows:

County            County of Seminole  
                     1101 East First Street  
                     Sanford, FL 32771  
                     Attention: J. Kevin Grace

LYNX             Central Florida Transportation Authority  
                     455 N. Garland Avenue  
                     Orlando, FL 32801-1128  
                     Attention: Linda S. Watson, Chief Executive Officer

with a copy to:

Central Florida Transportation Authority  
455 N. Garland Avenue  
Orlando, FL 32801  
Attention: Bert J. Francis, Chief Financial Officer

with a copy to:

Akerman, Senterfitt & Eidson, P.A.  
255 S. Orange Avenue, Suite 1700  
Orlando, Florida 32801  
Attention: Alberto S. Bustamante III, Esq.

11. RECORD KEEPING PROCEDURES. 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 County 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 County shall have access to and the right to examine any of the records.

12. FILING OF AGREEMENT. This Agreement shall be filed with the Clerk of the Circuit Court of Seminole County, Florida, or such other public official responsible under general or special law for the public records of Seminole County, Florida, in accordance with Section 163.01, Florida Statutes.

13. INDEMNITY AND INSURANCE. The parties agree that the County does not operate any of the services provided by LYNX, is not responsible for the purchase or maintenance of the equipment operated by LYNX, does not employ, train or otherwise deal with any employees of LYNX and has no control over the operations of LYNX except as may be stated herein. Accordingly, LYNX hereby assumes responsibility for all claims for personal injury, including death, and property damage caused by the operation of LYNX's public transportation system, including all claims based upon the negligence or intentional acts of any LYNX employee, officer, director, contractor or other person, firm or corporation for whom LYNX may be legally responsible. LYNX agrees to indemnify and hold harmless the County from and against all such claims and to defend the County in all lawsuits wherein the County is a named defendant as a result of any such claim. The intent of this indemnity and hold harmless clause is to relieve the County from any and all liability for claims based upon the operation of LYNX's transportation systems, all in recognition of the fact that the County contracts for services from LYNX, however, has no ability to control the day to day operations of LYNX. LYNX shall maintain appropriate insurance with minimum limits of one million dollars (\$1,000,000) per occurrence for the GL coverage, statutory amounts of workers' compensation, and five million dollars (\$5,000,000) in automobile liability coverage, naming the County as an additional insured.

IN WITNESS WHEREOF, the parties hereunto executed this Agreement as of the day and year first above written.

Carol Frahn  
Assistant Secretary

CENTRAL FLORIDA REGIONAL  
TRANSPORTATION AUTHORITY

(seal)

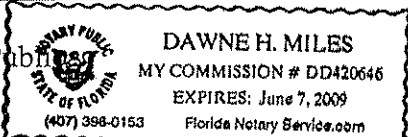
By: [Signature]

Printed Name: LINDA WATSON

Title: CEO

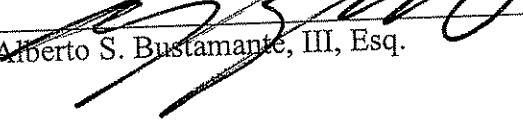
STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledge before me this 7<sup>th</sup> day of October, 2005, by Linda Watson, and she acknowledged before me that she executed the foregoing instrument on behalf of CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY as its true act and deed, and that she was authorized to do so.

Dawne H. Miles  
Name: \_\_\_\_\_  
Notary Public \_\_\_\_\_  


Serial Number:  
Commission Expires:

Approved by General Counsel  
Akerman, Senterfett & Eidson, P.A.

By:   
Alberto S. Bustamante, III, Esq.

SEMINOLE COUNTY, FLORIDA  
By: Board of County Commissioners

By: \_\_\_\_\_  
Seminole County Chairman

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_

As Clerk to the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

STATE OF FLORIDA  
COUNTY OF SEMINOLE

PERSONALLY APPEARED before me, the undersigned authority,  
\_\_\_\_\_ and \_\_\_\_\_, well known to me and known  
by me to be Chairman \_\_\_\_\_ and County Clerk, respectively,  
\_\_\_\_\_, Florida, and acknowledged before me that they executed the  
foregoing instrument on behalf of \_\_\_\_\_ as its true act and deed,  
and that they were duly authorized to do so.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

Name:  
Notary Public:  
Serial Number:

Commission Expires:

APPROVED AS TO FORM AND LEGALITY  
For use and reliance by the Seminole County,  
Florida, only.

\_\_\_\_\_  
County Attorney  
Seminole County, Florida

\_\_\_\_\_, 2005