




As a courtesy to others, please silence all electronic devices during the meeting.

1. Call to Order


2. Committee Minutes

-  Minutes from the March 26, 2015 Oversight Committee Meeting Pg 2


3. Committee Agenda

A. Oversight Committee Agenda

-  Mobile Ticketing Presentation Pg 10

-Attachments 

B. Oversight Committee Agenda

-  Review and Recommend to the Board of Directors Proposed Amendments to Administrative Rules 6.4.1.B, 6.4.2.B, 6.5.3, 6.5.4, and 6.6, and Delete the Current Rules 6.5.1 and 6.5.2 Pg 24

-Attachments   

4. Committee Information Items

A. Oversight Committee Information

-  Risk Management Committee Report Pg 72

-Attachments 

B. Oversight Committee Information

-  Finance and Audit Committee Report Pg 75

-Attachments 

Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board, agency, or commission with respect to any matter considered at a meeting or hearing, he will need a record of the proceedings, and that, for such purposes, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans With Disabilities Act of 1990, persons needing a special accommodation at this meeting because of a disability or physical impairment should contact Benjamin Gonzalez at 455 N. Garland Ave, Orlando, FL 32801 (407) 254-6038, not later than three business days prior to the meeting. If hearing impaired, contact LYNX at (407) 423-0787(TDD).

LYNX
Central Florida Regional Transportation Authority
Oversight Committee Meeting Minutes

PLACE: **LYNX Central Station**
 455 N. Garland Avenue
 Conference Room, 2nd Floor
 Orlando, FL 32801

DATE: **March 26, 2015**

TIME: **11:37 a.m.**

Members in Attendance:

Osceola County Commissioner, Viviana Janer
FDOT District 5 Secretary, Noranne Downs
Orange County, Assistant County Administrator, Jim Harrison
City of Orlando, Transportation Policy Advisor, Tanya J. Wilder

Members Absent:

Seminole County Commissioner, Carlton Henley, Chairman

1. Call to Order

Commissioner Viviana Janer, called the meeting to order at 10:32 a.m.

Commissioner Janer announced that Chairman Carlton Henley would not be in attendance and that the Committee needed to vote to appoint a temporary Chairman for the meeting.

Commissioner Janer recognized Jim Goldsmith, LYNX' General Counsel to call for an election.

Commissioner Viviana Janer was nominated as the temporary Chairman of the Oversight Committee. The nomination received a second and the Motion passed unanimously.

2. Approval of Minutes

The Chairman asked the Committee if there were any additions or deletions to the January 28, 2015 Minutes as presented.

Motion was made and seconded to approve the Minutes of the January 28, 2015 Oversight Committee meeting. The motion passed unanimously.

3. Oversight Agenda Items

A. Presentation on the Annual Financial Audit and Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ending September 30, 2014

The Chairman recognized Blanche Sherman, LYNX' Director of Finance, who introduced Ron Conrad, Cherry Bekaert, to make the presentation.

Mr. Conrad provided an overview of the Annual Financial Audit and Comprehensive Annual Financial Report (CAFR). He began with Cherry Bekaert's scope of service for LYNX.

- Scope of Service
 - Express an opinion on the Authority's financial statements
 - Review in accordance with Government Auditing Standards
 - Report on internal controls
 - Report on compliance with the Office of Management and Budget Circular A-133 and Rules of the Florida Auditor General
 - Prepare a schedule of findings and questioned costs
 - Issue management letter that provides recommendations
 - Issue a procedures report regarding National Transit Database information
 - Issue an examination report on compliance with investment policies

- Required Communications
 - Overview of Auditor's responsibility
 - Planned scope and timing of the audit
 - Communication with Management
 - Certain financial statement amounts subject to management judgment
 - There were no audit adjustments that were material to the financial statements

- Final Summary of Audit Results
 - Unmodified ("clean") opinion of the financial statements
 - Unmodified ("clean") opinions on major federal and state awards programs
 - The Schedule of Findings and Questioned Costs summarizes the audit results (no findings noted)
 - Issuance of reports on internal control over financial reporting and compliance matters, including Single Audit (no findings included)
 - Issuance of Management Letter, including information required by the State of Florida Auditor General
 - There is one finding on controls over insurance information provided to the actuary for calculation of estimated claims reserve
 - Issuance of report on National Transit Database Information ("clean" report with prior year comment on sampling resolved)

- Issuance of examination report on compliance with investment policies (“clean” opinion)

➤ Financial Highlights – Financial Position

(in Millions)

	<u>2014</u>	<u>2013</u>
Current & Other Assets	\$ 55.2	\$ 63.8
Capital Assets	<u>\$ 151.6</u>	<u>\$ 142.2</u>
Total Assets	<u>\$ 206.8</u>	<u>\$ 206.0</u>
Deferred Outflow	\$.8	\$.1
Current Liabilities	\$ 18.9	\$ 31.0
Long-term Liabilities	<u>\$ 10.2</u>	<u>\$ 10.4</u>
Total Liabilities	<u>\$ 29.1</u>	<u>\$ 41.4</u>
Net Position	<u>\$ 178.3</u>	<u>\$ 164.7</u>
Unrestricted Net Position	<u>\$ 30.7</u>	<u>\$ 29.0</u>

➤ Financial Highlights – Changes in Net Position

	<u>2014</u>	<u>2013</u>
Operating Revenue	\$ 51.6	\$ 49.4
Non-Operating Revenue	<u>\$ 70.7</u>	U
Total Revenue	\$ 122.3	\$ 117.7
Depreciation	<u>\$ 23.5</u>	<u>\$ 19.9</u>
Operating Expenses	<u>\$ 120.5</u>	<u>\$ 119.8</u>
Loss before Capital Contributions	\$ (21.7)	\$ (22.0)
Capital Contributions	<u>\$ 35.3</u>	<u>\$ 30.2</u>
Change in Net Position	<u>\$ 13.6</u>	<u>\$ 8.2</u>

LYNX’ Pension Plans are not included in the financial statements; however, Employer disclosures and accounting are included. There is a project at the Governmental Accounting Standards Board that has a preliminary view that the pension plans would be included. Mr. Conrad noted that this is a preliminary view and unsure if it will ultimately occur or when it would be finalized. In 2016 the financial statements will include the employer liability associated with pensions on a present value basis.

There is a uniform grant requirement that became effective of December 2014 which includes the administrative requirements, cost principals and audit requirements. There is a cost associated with the procurement of Federal awards which will become effective October 1, 2016. This requirement can be deferred to LYNX' FY2017 or LYNX can elect to report in FY2016.

The Committee asked when does LYNX need to make a decision regarding the deferment of the requirement. Mr. Conrad said that the decision is internal and LYNX is not required to submit the election in writing.

B. Overview of the FY2015 Amended Operating and Capital Budgets

The Chairman recognized Blanche Sherman, LYNX' Director of Finance, to make the presentation.

Ms. Sherman noted that on September 25, 2014, LYNX staff presented the FY2015 Operating and Capital Budgets in the amount of \$126,498,589 and \$87,809,187, respectively for Board approval. Since approval of the FY2015 Adopted Operating and Capital Budgets, LYNX has brought several items to the Board requesting approval and corresponding amendment to the operating and capital budgets.

The Operating budget amendment includes the following:

- Maitland SunRail NeighborLink service - \$78,118
- SR 50 Alternative Analysis funding revision from Federal to Reserves - \$200,000
- Transfer rural area funding (5311) from Federal to State - \$634,881
- Transfer TD funds from State to Federal funding - \$70,000

The Capital budget amendment includes the following:

- Compressed Natural Gas (CNG) vehicle purchase - \$1,481,600 (Local) and \$4,928,000 (Federal)
- CNG lease option - \$303,464
- Carry forward balance true-up – (\$5,092,623) comprised of (\$4,594,087) in Federal and (\$498,536) in Local
- Kissimmee Intermodal Facility recognition of local match funding from Reserves - \$200,000

Based on the Board's previous approval of these items and the reductions and reclassification for accurate budgetary management there is a need to amend the FY2015 Operating and Capital Budgets in the amount of \$78,118 and \$1,620,441, respectively. Approval of this amendment will formally amend the FY2015 Operating and Capital Budgets to accurately reflect approved revenues and expenses. The amended FY2015 Operating and Capital Budgets will be in the amount of \$126,576,707 and \$89,429,628, respectively.

Ms. Sherman provided that staff made a presentation of the revisions supporting the amendment at the Oversight Committee meeting and will be seeking the Boards' approval at its meeting later today.

Without objection, the Committee's recommendation to the Board will be to approve the amendment of the FY2015 Operating and Capitals Budgets.

C. FY2016 Preliminary Operating Budget Discussion

The Chairman recognized Blanche Sherman, LYNX' Director of Finance, to make the presentation.

Ms. Sherman provided the FY2016 Budget Development Assumptions.

- Key Budget Assumptions – Overall
 - FY2016 Funding based on the adopted LYNX Funding Model
 - Maximize current service levels through efficiencies
 - Apply additional Flex (NeighborLink) services, where appropriate
- Key Budget Assumptions – Revenue
 - Maintain current Preventative Maintenance funding level
 - Maximize use of anticipated Advertising Revenue
 - Potential Royalties from third party usage of Compressed Natural Gas (CNG)
- Key Budget Assumptions – Expenses
 - Salary increases consistent with Funding Partners
 - Anticipated impact of a new Union contract
 - Continuation of Fuel Hedging Program, as appropriate
 - Impacts of conversion to Compressed Natural Gas (CNG)
 - Continued application of reductions based on LYNX ownership of paratransit vehicles
 - Continuation of Bio-diesel Program, as appropriate
 - Evaluate LYNX' current Health Insurance Program for consideration of becoming self-insured
- Pending Items
 - Fare increase in FY2016
 - Toll Revenue Credits
 - Funding Partner approved COA Recommendations
 - Impacts of SunRail Phase 2 expansion

Ms. Sherman provided a breakdown of FY2016 Operating Revenue including local revenue by jurisdiction and Operating Expenses.

➤ Operating Budget Overview

	FY2015 <u>Amended</u>	FY2016 <u>Preliminary</u>	<u>% Change</u>
Operating Revenue	\$126,576,107	\$126,493,478	-0.1%
Operating Expenses	\$126,576,107	\$126,493,478	-0.1%
Operating Income / (Deficit)	\$ -	\$ -	N/A

➤ Future Items

- Consideration of Public / Private Partnership (P3) (satellite facilities / BRT)
- Continue to review the type of fixed route vehicles used in future operations
- Seek State grant funding opportunities for capital projects

➤ Budget Calendar

Preliminary Budget Presentation	March 26
Funding Request Letters Submitted to Funding Partners	May
Budget Presentation Osceola & Orange Counties	June / July
Budget Presentation Seminole County	August
Final Board Action	September 24
Budget Year 15-16 Commences	October 1

Ms. Sherman noted that Staff will meet with the Finance & Audit Committee to provide additional details and receive recommendations prior to submitting Funding Request Letters to the Funding Partners.

Staff was requested to provide the Oversight Committee the meeting date calendar of the Finance & Audit Committee.

Without objection, the Committee's recommendation to the Board will be to utilize the Preliminary Budget for further evaluation and subject to final review by the Finance and Audit Committee and Oversight Committee.

4. Other Business - Election of the 2015 Oversight Committee Vice-Chairman

The Chairman noted that at the last meeting of the Oversight Committee, a Motion was passed to table the election of the Committee's Vice Chairman until this meeting of the Committee.

A recommendation for postponing the election was made and discussion ensued.

Motion was made, seconded and passed unanimously to table the election of the Vice Chairman until the next scheduled meeting of the Committee.

5. Committee Information Items

A. Finance and Audit Committee Report

The Chairman recognized Chris McCullion, Chairman of the Finance and Audit Committee, to make the presentation.

Mr. McCullion provided that the Committee has held four meetings to date. The Committee has reviewed the proposal for the CNG facility, financing alternatives for the capital purchase of the CNG buses, the 2014 Finance and Audit Report, and the Committee reviewed the FY2016 Preliminary Budget. He stated the Committee has also reviewed the question of self-insured health insurance is right of the organization or not. Up to this point, LYNX has done well with a fully insured premium rather than self-insured based on the analysis of the broker, however, with increased premiums that equation could change.

B. Risk Management Committee Report

The Chairman recognized John Petrelli, Chairman of the Risk Management Committee, to make the presentation.

Mr. Petrelli provided that the Committee has held two meetings to date. The Committee has focused on what the context of what the Committee will be reviewing, guidelines as to the types of claims that the Committee will review, and communicating with LYNX' Risk consultant on transition and search for a Director of Risk Management. The Committee members have met with the consultant to provide oversight as to the structure of each individual program. The Committee has not yet reviewed individual claims.

6. Review of Board Package

The Chairman recognized John Lewis, Chief Executive Officer, to provide an overview of items that will come before the Board.

Mr. Lewis noted that staff is not recommending changes to the LYNX Board of Directors' meeting.

The Committee noted that while it is not on the Board agenda, they asked Mr. Lewis to provide information concerning the receipt of an unsolicited proposal.

Mr. Lewis provided that LYNX established a policy and procedure for the receipt of unsolicited proposals. An unsolicited proposal has been received from a fare media company, Accenture. The company is highly regarded in the transportation industry and financial management. The proposal was received along with the required \$25,000 payment. The payment will be used to offset LYNX' costs for evaluating the proposal.

Accenture is proposing to demonstrate through a pilot their mobile fare payment. LYNX customers would be able to utilize their cell phones, PDA's, laptops, etc. to pay for LYNX transit services. On a daily basis, approximately 45,000 customers pay by cash and that would be the target audience for the mobile fare payment. LYNX staff will begin to evaluate the proposal. If it is credible and LYNX would like to move forward with, staff will make the recommendation to the Oversight Committee and to the Board. Pending Board approval, the next step would be to advertise for competitive proposals. Staff would then evaluate competing proposals and make final recommendation to the Committee and Board.

Commissioner Janer stated that she had received an internet link which demonstrates what is currently taking place on the Washington, DC Metro. It provides good information of the usage and how riders will use the mobile technology. Mr. Lewis noted that LYNX had received the link and would provide it to the Committee.

The meeting adjourned at 11:46 p.m.

Oversight Committee Agenda Item #3.A.

To: LYNX Board of Directors

From: Blanche Sherman
DIRECTOR OF FINANCE
LEONARD ANTMANN
(Technical Contact)

Phone: 407.841.2279 ext: 6100

Item Name: Mobile Ticketing Presentation

Date: 5/13/2015

LYNX staff will present information on mobile payments for discussion with the Oversight Committee members.

LYNX is considering the use of mobile payments to enhance LYNX' customer experience in today's fast moving, digital world, reduce the cost of fare operations and deliver long term value. It is anticipated that mobile payments meet customer demands for easy-to-use transit and represent a sound investment when integrated with existing fare systems allowing customers to purchase fare products and stored value that can be validated hands-free upon boarding, or loaded onto existing system fare cards.

The use of mobile payments can turn the customer's mobile device into both a ticket and a ticket vending machine supplementing existing payment streams and reduce the use of the costlier channels in LYNX' fare system. Through the use of mobile payments, LYNX may be in position to uniquely provide the vision and roadmap for LYNX to incrementally evolve a mobile fare solution to use technology that will synthesize and personalize trip planning, fare purchases, rider alerts, station amenities, and more.

The cost savings and benefits from having a mobile payment solution can be leveraged to enable a coherent, universally accessible system for the Central Florida Region and the diversity of its riders.

Shyam K. Dunna, Principal with nMomentum Corporation, will provide a brief overview of mobile payment systems at the May 13, 2015 Oversight Committee meeting.

Automated Fare Collection Systems and Mobile Payment Systems

Presented to the

LYNX Board of Directors

by Shyam K. Dunna

Principal, nMomentum Corporation

May 13, 2015



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- Current AFCS at LYNX
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- Mobile Payment Systems Benefits
- Industry Outlook
- Mobile Payment System Project Timelines
- Recommendations and Next Steps

Current AFCS at LYNX



- GFI Back Office
- GFI Fareboxes
- All magnetic and cash system
- Numerous Manual processes
- Limited options for self-service customers
- Limited security on magnetic cards
- Card replenishment, inventory procurement and management necessary

ACS/Xerox Project



- Brought about as a need to implement transfers to/from Sunrail
- Smartcard based Fare Collection System
- Card or Limited Use Media (LUM) linked to an account in the back office
- Requires validator and communications equipment on buses to communicate with back office
- Fare products are not on the card but in Central Data Collection and Information System (CDCIS) database
- Card replenishment, inventory procurement and management necessary

ACS/Xerox Project



Initial Procurement:

Central Data Collection and Information System (CDCIS)

Back Office * procured by Sunrail

Full Service Ticket Vending Machines (2)

Bus On-board validators and Communications (300)

Retail Point-of-sale machines (5)

Fare Media – Standard use Smart Cards

Fare Media – Limited use Smart Cards

Future (Options):

Point-of-sale machines (200)

Fare Media – Standard use Smart Cards

Fare Media – Limited use Smart Cards

Summary Project Timelines



Project Plan Items	2012						2013						2014											
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
1.0 Notice To Proceed		▲																						
2.0 CDRL Receipt/Review/Approval			↔																					
3.0 Development Phase						↔																		
4.0 Factory Acceptance Testing											↔													
5.0 Production Phase				↔																				
6.0 Pilot Phase (10 Vehicles/10 POSMs/1 TVM)												↔												
7.0 Training																								
8.0 Full Installation Phase																								
9.0 Project Closeout																								
10.0 Full System Development/Testing																								

Project Update/Issues



- ACS/Xerox has not met published schedules for LYNX
- Bus Pilot failures. Inadequate testing
- TVM pilot Failures. Inadequate testing
- Majority of the system is still under development
- Adequate reporting not yet available
- Has not been designed to be a regional system per discussions with Xerox
- Not a user friendly system & contains numerous bugs
- Access to test back office still in works for LYNX
- Other contractual obligation issues
- Change orders

Mobile Payment Systems



- Latest Generation of AFCS Technologies
- Utilizes Fare Payment app on smartphone with administrative backoffice
- Provides 24x7x365 convenient self-service for riders
- Can be integrated with other smartphone apps like real-time scheduling, events and alerts, Trip Planning etc.
- Easier for customers to use than Ticket Vending Machines
- Can link credit/Debit cards, checking/savings and paypal accounts for auto replenishments

People are increasingly using their phone to pay



Mobile Devices Overview



- 97 % of the U. S. households have mobile phones (Nov. 2014). Average household owns 5.2 connected devices [1]
- Smartphones accounted for 66% of total phone market in 2014. Estimated to increase to 9 out of 10 phones by 2018 [2]
- Mobile App use up 76% in 2014 [2]
- Enhanced service information, superior customer service, significant operational cost reductions and attracting millennial riders are major drivers for LYNX.

[1] – www.ctia.org [2] – www.gartner.com

Mobile Payment Systems Benefits



- Can be implemented with or without on-board bus validators
- Eliminates needs for purchase of expensive TVMs
- Eliminates needs for retailer distribution and retail point of sale devices
- Flexible to program and make changes since it is application driven
- Provides new fare options e.g. bundle event tickets, loyalty programs, coupons, family passes etc.
- Very Popular among riders



Mobile Payment Systems Benefits



- Reduce cash collection costs, cost of purchasing card media and inventory management.
- Allow for additional revenue opportunities from various programs that Mobile Payments can offer.
- Has faster implementation time frame because of simpler fare structure.
- Different Options for Mobile Payment
 - Using NFC chips in Smartphones for fare payment
 - Using bluetooth technology for fare payment
 - Using bar codes for fare payment



Mobile Payment Systems



Industry Outlook

- Numerous Transit Agencies in U.S. have implemented Mobile Payment Systems e.g. UTA-Salt Lake City, Trimet-Portland, MBTA-Houston, OCTA-CA, DART-Dallas, Capital Metro-Austin, NJ Transit etc.
- In process at MARTA-Atlanta, WMATA-Washington DC, CTA-Chicago, VIA Transit-San Antonio & others
- 100% positive press received on all agency implementations from riders and the media
- Agencies have also incorporated Trip Planning and System Alert information into the Mobile App

Thank You



Questions



Oversight Committee Agenda Item #3.B.

To: LYNX Board of Directors

From: Susan Black
GENERAL MANAGER
BRENDA HERNANDEZ
(Technical Contact)

Phone: 407.841.2279 ext: 6058

Item Name: Review and Recommend to the Board of Directors Proposed Amendments to Administrative Rules 6.4.1.B, 6.4.2.B, 6.5.3, 6.5.4, and 6.6, and Delete the Current Rules 6.5.1 and 6.5.2

Date: 5/13/2015

ACTION REQUESTED

Pursuant to the authority contained in Administrative Rule 1.1.3, Staff is requesting the Board of Directors amend Administrative Rule 6.4.1.B, 6.4.2.B, 6.5.3, 6.5.4, and 6.6, and delete the current Rules 6.5.1 and 6.5.2.

BACKGROUND

Staff is requesting the Board of Directors amend Administrative Rule 6 (Dispute Resolution) to reflect four material changes, as follows:

1. Procurement Dispute Appeal Process (6.4.1.B & 6.4.2.B)

Recommended Amendment: Together with LYNX' General Counsel, Staff recommends provisions be added to the existing rule (recommended language appearing in the attached "red-lined" and "clean" versions of the proposed Administrative Rule 6) that will address instances in which LYNX does not have a General Manager.

2. LYNX-Administered Dispute Appeal Process (6.5.1 – 6.5.2)

Recommended Amendment: Together with LYNX' General Counsel, Staff recommends these subsections be deleted.

3. Delegation of Settlement Authority: Contract Disputes (current 6.5.3 – 6.5.4)

Recommended Amendment: Together with LYNX’ General Counsel, Staff recommends provisions be added to the existing rule (recommended language appearing in the attached “red-lined” and “clean” versions of the proposed Administrative Rule 6) permitting the CEO to delegate his/her authority to settle contract disputes (subject to existing monetary limitations) to any “Senior Officer.”

4. Delegation of Settlement Authority: Tort and Workers’ Compensation Claims (6.6)

Recommended Amendment: Together with LYNX’ General Counsel, and after obtaining input and feedback from the LYNX Board’s Risk Management Committee, Staff recommends the following modifications to the current procedure for settling tort and workers’ compensation claims. Recommended language appears in the attached “red-lined” and “clean” versions of the proposed Administrative Rule 6.

- i. The CEO may settle disputes up to \$200,000 per person and \$300,000 per incident (which is equal to the limits of the limited waiver of sovereign immunity contained in Section 768.28) (the “settlement cap”); provided that the settlement is within the budget line item for settlements or covered by insurance. To the extent that 768.28, Fla. Stat., is amended to increase or decrease the limited waiver of sovereign immunity, the settlement cap will be adjusted accordingly. Should LYNX obtain commercial, third-party insurance with coverages in excess of the \$200,000/300,000 limits, the CEO will have the authority to settle disputes up to the limits of such coverages.
- ii. The CEO may delegate limited settlement authority to certain permitted delegates as follows:
 - 1. General Manager: up to \$100,000
 - 2. Director of Risk Management: up to \$50,000
 - 3. Third-party Administrator: up to \$3,000
- iii. The CEO will continue to be able to settle disputes in excess of the settlement cap and without insurance if consented to by the Board Chair as currently permitted under Rule 6.

FISCAL IMPACT

There is no fiscal impact associated with this action.

Staff is requesting the Board of Directors amend Administrative Rule 6 (Dispute Resolution) to reflect four material changes, as follows:

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- ii. The CEO may delegate limited settlement authority to certain permitted delegates as follows:

1. General Manager:up to \$100,000
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3. Third-party Administrator:.....up to \$3,000

iii. The CEO will continue to be able to settle disputes in excess of the settlement cap and without insurance if consented to by the Board Chair as currently permitted under Rule 6.

ADMINISTRATIVE RULE 6

SUBJECT: DISPUTE RESOLUTION

EFFECTIVE DATE: ~~March 22, 2012~~ May 13, 2015¹

SCOPE:

This Administrative Rule sets forth the processes by which the Authority resolves disputes involving its procurement process, its contracts for the purchase and/or sale of goods, supplies, services or other materials, and other claims, generally, which would include for example claims against the Authority related to torts and workers compensation, which may or may not involve litigation.

AUTHORITY:

Authority for the establishment of this Administrative Rule is as follows:

Part II, Chapter 343, Florida Statutes

RULE 6: Dispute Resolution

- 6.1 **Purpose of Rule.** The Governing Board has established this Administrative Rule for the following purposes:
- A. To set forth procedures for the resolution of disputes related to the Authority's Procurement process;
 - B. To set forth procedures for the resolution of disputes related to Contracts to which the Authority is a party; and
 - C. To set forth rules that apply to all other disputes involving the Authority, including tort claims and workers' compensation claims.
- 6.2 **Application.** The provisions of **Section 6.3** shall apply to all disputes. All disputes that relate to the Authority's Procurement process shall be resolved in accordance with the applicable process set forth in **Section 6.4**. All disputes that relate to Contracts with the Authority shall be resolved in accordance with the process set forth in **Section 6.5**. The provisions of **Section 6.6** shall apply to the settlement of all claims (other than those addressed by **Section 6.5**), including those involving workers' compensation and tort claims.
- 6.3 **General Provisions Applicable to All Disputes.** The following provisions shall apply to all disputes, regardless of whether such disputes relate to the Authority's Procurement process, Contracts with the Authority, or any other claims:

¹ This ~~new~~ Administrative Rule was adopted by the Governing Board at its meeting held on July 28, 2010. ~~It removes from Administrative Rule 4 any dispute resolution materials and expands such materials to include other dispute resolution areas. This Administrative Rule 6 was further~~ 2010 and was amended by the Governing Board at its ~~meeting~~ meetings held on March 22, ~~2012-2012 and~~ May 13, 2015.

6.3.1 **No Waiver of Sovereign Immunity.** Pursuant to Florida Statutes § 768.28, the State of Florida, for itself and for its agencies and subdivisions, has agreed to waive sovereign immunity for torts, but only to the extent specified therein. No provision of any Contract nor any provision of these Administrative Rules shall be interpreted to constitute a waiver by the Authority of the benefits afforded to it by sovereign immunity beyond the specific amounts waived by Florida Statutes § 768.28.

6.3.2 **Federal Transit Administration.**

- A. **FTA Notification.** The Authority shall notify the FTA of all disputes arising from the Procurement process and all Contract Disputes, which, in either case, involve the expenditure of Federal funds, and shall keep the FTA apprised of the status of same.
- B. **FTA Review.** Under certain circumstances the FTA will review a Procurement dispute or Contract Dispute that involves a Procurement made with Federal funds, however, such review is limited to determining whether the Authority has failed to follow its protest procedures.

6.3.3 **Arbitration or Judicial Action.** With respect to any dispute involving the Procurement process or Contracts to which the Authority is a party, each Bidder, Proposer, and Contractor, as applicable, agrees that, with respect to any such dispute, the Authority shall have the sole discretion to determine whether the parties should first attempt to resolve said dispute by mediation. Each Bidder, Proposer, and Contract, as applicable, further agrees that should the Authority not elect to first attempt to resolve the dispute by mediation, or should mediation be unsuccessful, the Authority shall have the sole discretion to determine whether said dispute should be resolved by either a court of law or by binding arbitration. In that regard the following provisions shall apply:

- A. **Mediation.** If the Authority decides that the parties to a dispute should first attempt to resolve the dispute by mediation, then the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, judicial action or some other dispute resolution procedure. Any such mediation shall be held in Orange County, Florida.
- B. **Arbitration.** If the Authority decides that a dispute should be resolved by arbitration, then arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any such arbitration shall be held in Orange County, Florida.

C. **Judicial Action.** If the Authority decides that a dispute should be resolved in a court of law, then the following provisions shall be applicable:

(i) **Jurisdiction and Venue.** Any action, suit or proceeding arising in connection with the dispute shall be brought exclusively in the Ninth Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division.

(ii) **JURY TRIAL WAIVER. THE AUTHORITY, ON ONE HAND, AND THE BIDDER, PROPOSER OR CONTRACTOR, AS APPLICABLE, ON THE OTHER, EACH AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL THEN OR THEREAFTER EXIST WITH REGARD TO THE CONTROVERSY OR CLAIM, OR ANY COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THE FOREGOING WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.**

With respect to this subsection, it is subject to the specific provisions of **Section 6.3.6** below, and nothing contained herein shall grant to any party any rights with respect to any protest which may be filed under **Section 6.4** below.

6.3.4 **Director of Procurement.** All notices and other communications which are required to be filed with the Director of Procurement pursuant to this Rule 6 shall be in writing and shall be sent to the Director of Procurement at the following address:

LYNX Central Station
Procurement Department
455 North Garland Avenue
Orlando, Florida 32801
Attention: Director of Procurement

6.3.5 **Severability.** If any portion of this Rule 6 is determined to be invalid or unenforceable, the balance of this Rule 6 shall remain in effect.

6.3.6 **Status of Protest with Respect to Procurement Protest.** Nothing contained in any procurement dispute resolution procedure, including the provisions under **Section 6.4**, shall grant any Protesting Party any right as to that procedure (including any right to file a Procurement Protest or, if filed, any right with respect to the processing of that Procurement Protest by the Authority) including any right to enter into a Contract with the Authority. Rather, the right to protest any action

of the Authority under **Section 6.4**, or under any component thereof, including before the SEC or the Director of Procurement, shall be a matter of privilege, as any protest shall solely be for the benefit of the Authority. The resolution of any protest shall be solely within the discretion of the Authority, including within the discretion of those individuals or entities designated herein for hearing and resolving any protest, and any decision by the Authority shall be final and binding and not subject to any further appeal or protest. Any party submitting any proposal with the Authority shall specifically by virtue of filing any such proposal expressly agree to the provisions of this Section.

- 6.3.7 **Contact with Authority/No Solicitation or Contact During Procurement Dispute Process.** All prohibitions with respect to contact with Members and Officers of the Authority pursuant to **Section 4.7** of Administrative Rule 4 shall remain in effect until the resolution of the protest or the exhaustion afforded the Protesting Party under **Section 6.4** hereof.

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SECTION 6.4:

THE PROCEDURES SET FORTH IN SECTION 6.4 (INCLUDING SECTION 6.4.1 & 6.4.2) SHALL APPLY TO ALL DISPUTES ARISING FROM THE PROCUREMENT PROCESS.

- 6.4 **Disputes Involving Procurement Process – Applicable Procedure.** All disputes that arise from the Procurement process shall be resolved in accordance with one of the two procedures set forth in either **Section 6.4.1** or **Section 6.4.2**. The procedure set forth in **Section 6.4.1** shall apply when only the Director of Procurement is responsible for the recommendation of award of a Contract or when the dispute relates to an issue arising before the Procurement is submitted to a Source Evaluation Committee. The procedure set forth in **Section 6.4.2** shall apply when only a Source Evaluation Committee is responsible for the recommendation of award of a Contract and the dispute relates to an issue arising after the Procurement is submitted to a Source Evaluation Committee.

Failure to timely and fully comply with each of the requirements in the applicable procedure shall, in the absolute discretion of the Director of Procurement, result in a waiver of the protest (collectively, a “**Waiver**”). Any Bidder or Proposer protesting the Procurement process or any award of a Contract thereunder is referred to in this Rule as a “**Protesting Party**.”

SECTION 6.4.1:

THE PROCEDURE SET FORTH IN THIS SECTION 6.4.1 SHALL APPLY WHEN: (1) ONLY THE DIRECTOR OF PROCUREMENT IS RESPONSIBLE FOR THE RECOMMENDATION OF AWARD OF THE CONTRACT, OR (2) WHEN THE DISPUTE RELATES TO AN ISSUE ARISING BEFORE THE PROCUREMENT IS SUBMITTED TO A SOURCE EVALUATION COMMITTEE.

- 6.4.1 **General.** The following procedure shall apply to all disputes arising from the Procurement process or the award of a Contract thereunder when: (1) only the Director of Procurement is responsible for the recommendation of award of the Contract, or (2) if the dispute relates to an issue arising before the Procurement is submitted to a Source Evaluation Committee (such as when the dispute relates to a submission requirement or a filing deadline).
- A. **Step 1 – Director of Procurement.** The initial arbiter of any dispute which is subject to this procedure shall be the Director of Procurement. The process by which disputes shall be resolved by the Director of Procurement is as follows:

1. **Procurement Protest; Deadline for Filing.** In order to initiate the dispute resolution process, the Protesting Party must file a formal written protest (“**Procurement Protest**”) with the Director of Procurement. The Procurement Protest must be filed before 5:00 p.m. (local time) on the fifth (5th) business day following (i) the posting date of the Director of Procurement’s recommendation of award, or (ii) if there is no recommendation yet made, then following the particular action that the Protesting Party wishes to appeal (e.g., a determination by the Director of Procurement that the bid by the Protesting Party is untimely or does not meet the necessary qualifications and therefore has been rejected). Failure to file the Procurement Protest by this deadline shall result in a Waiver by the Protesting Party. Failure of the Protesting Party to request a copy of the recommendation of award shall not extend the deadline for filing a Procurement Protest. A Procurement Protest is considered filed with the Director of Procurement upon his/her receipt.

2. **Requirement to Notify Person Awarded Contract.** The Protesting Party must also timely furnish a copy of the Procurement Protest to the Person who was recommended to be awarded the Contract (if a recommendation of award had been made) at or before the time the Protesting Party files the Procurement Protest under paragraph 1 above. Failure to timely comply with the aforementioned requirement will result in the Procurement Protest being deemed untimely, and, as a consequence, result in a Waiver by the Protesting Party.

3. **Elements of Procurement Protest.** The Procurement Protest must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and

 - b. a clear, succinct and complete statement of the Protesting Party’s grounds for the Procurement Protest and the request for relief. Any supporting materials must be contained in said statement. No materials may be submitted in furtherance of the Procurement Protest after the timely submittal without the Authority’s approval, and can be disregarded by the Authority in its discretion.

 - c. the cash bond referenced in the following paragraph 4.

The Procurement Protest will be the sole basis for the Authority to review said Procurement Protest. Notwithstanding the foregoing, the Director of Procurement may, in his/her absolute discretion, seek additional materials regarding the Procurement Protest either

from the Protesting Party or from other sources, as set forth in paragraph 6 below.

4. **Requirement of Deposit to Proceed to Protest.** Concurrently with, and as a condition for, the filing of a Procurement Protest, the Protesting Party shall furnish to Director of Procurement along with filing the Procurement Protest a cash bond (in the nature of a check payable to the Authority) in an amount equal to two percent (2%) of the amount bid by the Protesting Party, but in no event less than \$1,000.00. However, the Protesting Party may, with the filing of the Procurement Protest, request a reduction in said cash bond which the Director of Procurement may, in her/her absolute discretion for good cause shown, reduce, but in no event to less than \$1,000.00 (thus, in any event, the Protesting Party if it seeks a reduction in the cash bond under the foregoing clause, must post with the Procurement Protest a cash bond in the amount of \$1,000.00 at the time of filing the Procurement Protest). Said cash bond shall be held by the Authority for the purpose of paying any expenses (including its attorneys' fees) incurred by the Authority in processing the Procurement Protest. Further, if it is determined by the Authority that the Procurement Protest is without merit, the Authority may assess against the Protesting Party an additional amount to cover any third-party expenses (e.g., attorneys' fees) incurred by the Authority. In the event the Procurement Protest is successful and ultimately affirmed by the final deciding body or person, then the Authority may consider (but is not obligated to make) a refund to the Protesting Party of all or a portion of said cash bond.

5. **Suspension of Procurement Process.** The Procurement process (including the awarding of the Contract) shall be suspended upon receipt of a Procurement Protest which satisfies the filing and content requirements set forth above. Such suspension shall continue until the earlier of:
 - a. the resolution of the Procurement Protest;
 - b. the exhaustion of all remedies afforded the Protesting Party under this procedure;
 - c. a determination by the Chief Executive Officer, in his or her absolute discretion (and not subject to any further appeal or review), that the award of the Contract without delay is in the best interest of the Authority; or
 - d. a determination by the Chief Executive Officer that the Procurement Protest is frivolous in nature.

6. **Decision by Director of Procurement.** The Director of Procurement shall render a written decision as to the matters set forth in the Procurement Protest.
7. **Hearing.** The Director of Procurement may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Protest. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Director of Procurement and will be presided over by the Director of Procurement. Failure by the Protesting Party to attend and participate in any hearing required by the Director of Procurement will result in a Waiver by the Protesting Party. Nothing contained will require any such hearing and the Director of Procurement may resolve the Procurement Protest based solely upon the Procurement Protest and such other information as the Director of Procurement may desire or obtain in his/her discretion.
8. **Additional Information for Director of Procurement.** Nothing contained in this Section will restrict or prohibit the Director of Procurement from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
9. **Appeal Right.** The decision of the Director of Procurement shall be final and conclusive unless the Protesting Party timely appeals the decision in accordance with **Section 6.4.1.B** below.

B. **Step 2 – General Manager.** The appeal of any decision of the Director of Procurement shall be rendered by the General Manager. If at any time the Authority does not have a General Manager, the appeal shall be rendered by such other Senior Officer as designated by the Chief Executive Officer in writing. Any such designation shall only be effective for the particular appeal to which such designation relates and a copy of the written designation shall be filed with the books and records of the Authority. The process by which appeals shall be rendered by the General Manager is as follows:

1. **Procurement Appeal; Deadline for Filing.** If the Protesting Party desires to appeal the decision of the Director of Procurement, the Protesting Party must file a formal written appeal (“**Procurement Appeal**”) with the Director of Procurement in accordance with the requirements below. The Procurement Appeal must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the date the Director of Procurement renders its decision in accordance with Section **6.4.1.A(6)**. Failure

to file a Procurement Appeal by this deadline will result in a Waiver by the Protesting Party. A Procurement Appeal is considered filed with the Director of Procurement upon receipt.

2. **Elements of Procurement Appeal.** The Procurement Appeal must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear explanation of either or both of the following: (i) why the decision reached by the Director of Procurement was incorrect and/or (ii) in what way the Director of Procurement failed to adhere to the terms of this dispute resolution procedure. No further material or support may be submitted by the Protesting Party.
 - c. The cash bond referenced in paragraph A(4) shall remain for any expenses incurred by the Authority in the appeal process.
3. **Additional Information for General Manager.** Nothing contained in this Section will restrict or prohibit the General Manager from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
4. **Hearing.** The General Manager may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Appeal. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the General Manager and will be presided over by the General Manager. Failure by the Protesting Party to attend and participate in any hearing required by the General Manager will result in a Waiver by the Protesting Party.
5. **Decision by General Manager.** The General Manager shall render a written decision as to the matters set forth in the Procurement Appeal.
6. **Final Decision.** The decision rendered by the General Manager shall be final and binding upon the Protesting Party, and shall not be subject to any further appeal.

SECTION 6.4.2:

THE PROCEDURE SET FORTH IN THIS SECTION 6.4.2 SHALL ONLY APPLY IF: (1) A SOURCE EVALUATION COMMITTEE IS RESPONSIBLE FOR THE RECOMMENDATION OF AWARD OF THE CONTRACT AND (2) THE DISPUTE RELATES TO AN ISSUE ARISING AFTER THE PROCUREMENT IS SUBMITTED TO THE SOURCE EVALUATION COMMITTEE.

6.4.2 **General.** The following procedure shall apply to all disputes arising from the Procurement process when: (1) a Source Evaluation Committee is responsible for the recommendation of award of the Contract and (2) the dispute relates to an issue arising after the Procurement is submitted to the Source Evaluation Committee. If a dispute relates to a matter that arises before the Procurement has been submitted to the Source Evaluation Committee (such as when the dispute relates to a submission requirement or a filing deadline), then, in that case, the dispute shall instead be resolved in accordance with the procedure set forth in **Section 6.4.1.**

A. **Step 1 – Director of Procurement.** The initial arbiter of any dispute which is subject to this procedure shall be the Director of Procurement. The process by which disputes shall be resolved by the Director of Procurement is as follows:

1. **Procurement Protest; Deadline for Filing.** In order to initiate the dispute resolution process, the Protesting Party must file a Procurement Protest with the Director of Procurement. The Procurement Protest must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the posting date of the Source Evaluation Committee's recommendation of award. Failure to file a Procurement Protest by this deadline will result in a Waiver by the Protesting Party. Failure of the Protesting Party to request a copy of the recommendation of award shall not extend the deadline for filing a Procurement Protest. A Procurement Protest is considered filed with the Director of Procurement upon his/her receipt.
2. **Requirement to Notify Person Awarded Contract.** The Protesting Party must also mail a copy of the Procurement Protest to the Person who was recommended to be awarded the Contract at or before the time the Protesting Party files the Procurement Protest. Failure to timely comply with the aforementioned requirement will result in the Procurement Protest being deemed untimely, and, as a consequence, result in a Waiver by the Protesting Party.

3. **Elements of Procurement Protest.** The Procurement Protest must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear statement of the Protesting Party's grounds for the protest and the request for relief.
 - c. the cash bond referenced in the following paragraph 4.

The Procurement Protest must be based solely upon the materials submitted to the Authority for the award and will be the sole basis for the Authority to review the Procurement Protest. Notwithstanding the foregoing, the Director of Procurement may, in his/her absolute discretion, seek additional materials regarding the Procurement Protest either from the Protesting Party or from other sources, as set forth in paragraph 6 below.

4. **Requirement of Deposit to Proceed to Protest.** Concurrently with, and as a condition for, the filing of a Procurement Protest, the Protesting Party shall furnish to Director of Procurement along with filing the Procurement Protest a cash bond (in the nature of a check payable to the Authority) in an amount equal to two percent (2%) of the amount bid by the Protesting Party, but in no event less than \$1,000.00, **provided, however**, the Protesting Party may, with the filing of the Procurement Protest, request a reduction in said cash bond which the Director of Procurement may, in her/her discretion for good cause shown, reduce, but in no event to less than \$1,000.00 (thus, in any event, the Protesting Party if it seeks a reduction in the cash bond under the foregoing clause, must post with the Procurement Protest a cash bond in the amount of \$1,000.00 at the time of filing the Procurement Protest). Said cash bond shall be held by the Authority for the purpose of paying any expenses (including its attorneys' fees) incurred by the Authority in processing the Procurement Protest. Further, if it is determined by the Authority that the Procurement Protest is without merit, the Authority may assess against the Protesting Party an additional amount to cover any third-party expenses (e.g., attorneys' fees) incurred by the Authority. In the event the Procurement Protest is successful and ultimately affirmed by the final deciding body or person, then the Authority may consider (but is not obligated to make) a refund to the Protesting Party of all or a portion of said cash bond.
5. **Suspension of Procurement Process.** The Procurement process (including the awarding of the Contract) shall be suspended upon receipt of a Procurement Protest which satisfies the filing and

content requirements set forth above. Such suspension shall continue until the earlier of:

- a. the resolution of the protest;
 - b. the exhaustion of all remedies afforded the Protesting Party under this Procurement Protest Procedure;
 - c. a determination by the Chief Executive Officer in his or her absolute discretion (which will not be subject to any review) that the award of the Contract without delay is reasonably in the best interest of the Authority; or
 - d. a determination by the Chief Executive Officer that the Procurement Protest is frivolous in nature.
6. **Additional Information for Director of Procurement.** Nothing contained in this Section will restrict or prohibit the Director of Procurement from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
7. **Hearing.** The Director of Procurement may, in his/her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Protest. The Director of Procurement may, but it not obligated to, require that the Source Evaluation Committee be in attendance at the hearing and make determinations with respect to any aspect of the Procurement Protest as requested by the Director of Procurement, if any; **provided, however,** that the Director of Procurement reserves all rights to make a final determination with respect to the Procurement Protest, including if so requested by the Director of Procurement a “rescoring” or “reranking” by the Source Evaluation Committee. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Director of Procurement and will be presided over by the Director of Procurement. Failure by the Protesting Party to attend and participate in any hearing required by the Director of Procurement will result in a Waiver by the Protesting Party.
8. **Decision by Director of Procurement.** The Director of Procurement shall render a written decision as to the matters set forth in the Procurement Protest.

9. **Appeal Right.** The decision of the Director of Procurement shall be final and conclusive unless the Protesting Party timely appeals the decision in accordance with **Section 6.4.2.B** below.
- B. **Step 2 – General Manager.** The appeal of any decision of the Director of Procurement shall be rendered by the General Manager. If at any time the Authority does not have a General Manager, the appeal shall be rendered by such other Senior Officer as designated by the Chief Executive Officer in writing. Any such designation shall only be effective for the particular appeal to which such designation relates and a copy of the written designation shall be filed with the books and records of the Authority. The process by which appeals shall be rendered by the General Manager is as follows:
1. **Procurement Appeal; Deadline for Filing.** If the Protesting Party desires to appeal the decision of the Director of Procurement, the Protesting Party must file a Procurement Appeal with the Director of Procurement. The Procurement Appeal must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the date the Director of Procurement renders its decision in accordance with Section **6.4.2.A(6)**. Failure to file a Procurement Appeal by this deadline will result in a Waiver by the Protesting Party. A Procurement Appeal is considered filed with the Director of Procurement upon receipt.
 2. **Elements of Procurement Appeal.** The Procurement Appeal must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear explanation of either or both of the following: (i) why the decision reached by the Director of Procurement was incorrect and/or (ii) in what way the Director of Procurement failed to adhere to the terms of this dispute resolution procedure. No further material or support may be submitted by the Protesting Party.
 - c. The cash bond referenced in paragraph A(4) shall remain for any expenses incurred by the Authority in the appeal process.
 3. **Additional Information for General Manager.** Nothing contained in this Section will restrict or prohibit the General Manager from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.

4. **Hearing.** The General Manager may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Appeal. The General Manager may require that the Source Evaluation Committee be in attendance at the hearing and make determinations with respect to any aspect of the Procurement Appeal; provided, however, that the General Manager reserves all rights to make a final determination with respect to the Procurement Appeal. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the General Manager and will be presided over by the General Manager. Failure by the Protesting Party to attend and participate in any hearing required by the General Manager will result in a Waiver by the Protesting Party.
5. **Decision by General Manager.** The General Manager shall render a written decision as to the matters set forth in the Procurement Appeal.
6. **Final Decision.** The decision rendered by the General Manager shall be final and binding upon the Protesting Party.
7. **Special Rule for when General Manager is a member of the Source Evaluation Committee.** If the General Manager is a member of the Source Evaluation Committee for the Procurement which is the subject of the dispute, the appeal of any decision of the Director of Procurement shall be rendered by the Chief Executive Officer rather than the General Manager. Accordingly, when the General Manager is a member of the Source Evaluation Committee, the term “Chief Executive Officer” shall be substituted for the term “General Manager” wherever it appears in this **Section 6.4.2.B.**

6.4.3 **Status of Awards.** In regard to both **Section 6.4.1** and **6.4.2**:

- A. Nothing contained in this procedure shall afford to any party, including any Protesting Party, any right to receive an award of a Contract from the Authority or any right to protest as to the procedures so followed by the Authority. The process is solely for the benefit of the Authority and, as such, the Authority at all times, shall have the absolute discretion whether or not to dismiss a Procurement Protest and to award a Contract to any party, and to waive any irregularities or issues as to any submittal by the successful party.
- B. The ultimate award by the Authority of a Contract shall not be subject to any further appeal beyond that set forth in this **Section 6.4** ~~[and shall constitute a determination by the Authority of a determination that any Procurement Protest is without merit]-6.4.~~ Once the Authority has

approved the award of a Contract, that decision will be final and not subject to any further appeal.

- C. Notwithstanding the foregoing, should any party wish to institute a suit thereafter against the Authority, that party will be obligated to post a bond in favor of the Authority for the amount of the Contract award and will reimburse the Authority for any legal fees and costs it has incurred as a result of said appeal (which will be covered by said bond). In the event any Protesting Party should bring an action against the Authority, the sole remedy available to the Protesting Party, if it is successful, is to recover from the Authority the amount of the cash bond posted by it in the dispute resolution process. The Authority shall have no other liability or obligation whatsoever to said Protesting Party.

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SECTION 6.5:

~~THE PROCEDURE~~ **THE PROVISIONS** SET FORTH IN SECTION 6.5 (~~INCLUDING SECTION 6.5.1—6.5.4~~) SHALL APPLY TO THE SETTLEMENT OF ALL DISPUTES ARISING FROM CONTRACTS TO WHICH THE AUTHORITY IS A PARTY.

6.5 ~~Disputes Involving Contracts to Which the Authority is a Party.~~ Any **Settlement of Disputes.** The settlement of any and all controversies or claims arising out of or relating to any Contract to which the Authority is a party, or to any breaches thereof (collectively, “**Contract Disputes**”) ~~shall be resolved in accordance with the procedure set forth below, except as otherwise expressly provided to the contrary in a particular Contract. Failure to comply with each of the requirements in the applicable procedure shall result in a Waiver by the Contractor involved in the Contract Dispute.~~ must be approved by the Governing Board, except as provided in either 6.5.1 or 6.5.2 below:

6.5.1 ~~Step 1—Director of Procurement.~~ The initial arbiter of any Contract Dispute shall be the Director of Procurement. ~~The process by which disputes shall be resolved by the Director of Procurement is as follows:~~

- A. ~~Delivery of Written Notice; Waiver.~~ The Contractor must deliver written notice (in accordance with the provisions below) of a Contract Dispute to the Director of Procurement promptly upon first obtaining actual knowledge of the dispute. ~~Failure to promptly file written notice shall result in a Waiver by the Contractor.~~
- B. ~~Content of Written Notice.~~ The written notice referred to above must contain the following elements:
 - 1. ~~an identification of the Contract involved and an identification of all of the parties thereto; and~~
 - 2. ~~a clear description of the Contract Dispute (including a reference to the contractual provisions on which the Contractor is relying) and the remedy sought.~~
- C. ~~Hearing.~~ The Director of Procurement may, in his or her sole discretion, elect to conduct a hearing at which the Contractor will be invited to present evidence to support his, her or its position. ~~If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Chief Executive Officer. Failure by the Contractor to attend and participate in any hearing required by the Director of Procurement will result in a Waiver by the Protesting Party.~~
- D. ~~Decision by Director of Procurement.~~ Within fifteen (15) business days of receiving written notice of a Contract Dispute, which complies with the requirements above, the Director of Procurement shall render a written decision as to the matters in dispute. ~~In the event a hearing is held, the~~

~~aforementioned deadline shall be tolled until ten (10) days following the conclusion of the hearing.~~

E. ~~**Appeal Right.** The decision rendered by the Director of Procurement shall final and binding on the Contractor, unless it is appealed in accordance with **Section 6.5.2** below.~~

6.5.2 ~~**Step 2—General Manager.** The appeal of any decision of the Source Evaluation Committee shall be rendered by the General Manager. The process by which appeals shall be rendered by the General Manager is as follows:~~

A. ~~**Contract Appeal; Deadline for Filing.** If the Contractor desires to appeal the decision of the Director of Procurement, the Contractor must file a formal written appeal (“**Contract Appeal**”) with the Director of Procurement. The Contract Appeal must be filed before 5:00 p.m. (local time) of the fifteenth (15th) business day following the date the Director of Procurement renders its decision in accordance with **Section 6.5.1.D**. Failure to file a Contract Appeal by this deadline will result in a Waiver by the Contractor.~~

B. ~~**Elements of Contract Appeal.** The Contract Appeal must include the following elements:~~

- a. ~~an identification of the Contract involved and an identification of all of the parties thereto; and~~
- b. ~~a clear explanation why the decision reached by the Director of Procurement was incorrect.~~

C. ~~**Hearing.** The General Manager may, in his or her sole discretion, elect to conduct a hearing at which the Contractor may present evidence to support his, her or its position. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Chief Executive Officer. Failure by the Contractor to attend and participate in any hearing required by the General Manager will result in a Waiver by the Contractor.~~

D. ~~**Decision by General Manager.** Within thirty (30) days of receiving a Contract Appeal, satisfying the filing and content requirements set forth above, the General Manager shall render a written decision as to the matters set forth in the Contract Appeal. In the event a hearing is held, the aforementioned deadline shall be tolled until ten (10) days following the conclusion of the hearing.~~

E. ~~**Final Decision.** The decision rendered by the General Manager shall be final and binding upon the Contractor.~~

~~SECTION 6.5.3:-~~

~~THE PROVISIONS SET FORTH IN SECTION 6.5.3 SHALL APPLY TO ALL SETTLEMENTS OF CONTRACT DISPUTES.~~

~~6.5.3 Settlement of Disputes. The settlement of any Contract Dispute must be approved by the Governing Board, except as provided in either A, B or C below:~~

~~6.5.1 A. Settlements of Contract Disputes involving Minor Contracts (i.e., Contracts of \$150,000 or less). The Chief Executive Officer or General Manager, if designated by the Chief Executive Officer, is authorized to settle any dispute, claim or controversy~~ Contract Dispute without first obtaining the approval of the Governing Board if each of the following two conditions is met:

~~A. 1.~~ The Contract which is the subject of the Contract Dispute is a Minor Contract; and

~~B. 2.~~ The sum of (a) the settlement amount (when such amount is totaled with all other claims or judgments paid by the Authority arising out of the same incident or occurrence) and (b) the value of the Contract does not exceed \$150,000.

~~6.5.2 B. Settlements of Contract Disputes if Timing is an Issue. The Authority's Chief Executive Officer is authorized to settle any dispute, claim or controversy~~ Contract Dispute without first obtaining the approval of the Governing Board, irrespective of whether the ~~dispute, claim or controversy~~ Contract Dispute involves a Minor Contract or a Major Contract, and irrespective of the amount of the settlement, if each of the following two conditions is met:

~~A. 1.~~ The Chief Executive Officer determines that the Authority will likely suffer a financial or opportunistic loss by waiting until the next regularly scheduled meeting of the Governing Board to settle the dispute, claim or controversy; and

~~B. 2.~~ The Chairman of the Governing Board has first consented to the specific settlement.

~~6.5.3 6.5.4 Notification of Governing Board. The Governing Board must be notified of any settlement made without its prior approval pursuant to the authorization contained in either Section 6.5.3-A6.5.1 or B6.5.2 at its first Board meeting following the settlement; then in~~ In the case of settlements under ~~Section B6.5.2~~ above, notice will be given to the Governing Board as soon as practicable but in any event within ten (10) business days. Failure to timely provide notice to the Governing Board shall not affect the settlement.

6.5.4 **Delegation of Authority.** The Chief Executive Officer may delegate his or her authority to settle a Contract Dispute to any Senior Officer except, in the case of a settlement pursuant to **Section 6.5.2**, as otherwise directed by the Chairman of the Governing Board. Any such delegation shall be effective for the particular Contract Dispute to which such delegation relates and a copy of the written delegation shall be filed with the books and records of the Authority.

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SECTION 6.6:

THE PROVISIONS SET FORTH IN SECTION 6.6 (INCLUDING SECTION 6.6.1 – 6.6.3) SHALL APPLY TO ALL DISPUTES (OTHER THAN THOSE ADDRESSED BY SECTION 6.5), INCLUDING THOSE INVOLVING WORKERS' COMPENSATION AND ~~TORT CLAIMS~~TORTS.

6.6 **Settlement of Disputes.** The settlement of any dispute, claim or controversy involving the Authority (other than those addressed by **Section 6.5**), including those that arise from or that relate to torts and workers' compensation, must be approved by the Governing Board, except as provided in either ~~Section 6.6.1 or 6.6.1, 6.6.2 or 6.6.3~~ below:

6.6.1 ~~Settlements of \$50,000 or Less, up to Settlement Cap (as defined below).~~ The Chief Executive Officer, ~~or General Manager if designated by the Chief Executive Officer,~~ is authorized to settle any dispute, claim or controversy (~~other than those addressed by Section 6.5~~) without first obtaining the approval of the Governing Board if ~~(a) the settlement amount does not exceed \$50,000, when such amount is totaled with all other claims or judgments paid by the Authority arising out of the same incident or occurrence, and (b) the settlement amount is within the budget line item for settlements.~~ each of the following two conditions is met:

A. The settlement amount does not exceed \$200,000 for any dispute, claim or controversy by one person or \$300,000 for all disputes, claims or controversies arising out of the same incident or occurrence (the "Settlement Cap"); and

B. The settlement amount is within the budget line item for settlements or is covered by third-party insurance. The Settlement Cap is based upon the limited waiver of sovereign immunity set forth in Section 768.28, Florida Statutes. To the extent that Section 768.28, Florida Statutes, is amended to increase or decrease the limited waiver of sovereign immunity, the Settlement Cap shall be equal to such increased or decreased amount.

6.6.2 ~~Settlements over \$50,000. The Authority's~~ **in Excess of Settlement Cap Covered by Insurance.** If a dispute, claim or controversy is covered by third-party insurance, the Chief Executive Officer is authorized to settle ~~any such~~ dispute, claim or controversy (~~other than those addressed by Section 6.5~~) in excess of the Settlement Cap without first obtaining the approval of the Governing Board if each of the following two conditions is met:

A. The settlement amount in excess of the Settlement Cap is fully paid for by third-party insurance; and

B. The portion of the settlement amount up to the Settlement Cap is within the budget line item for settlements or, to the extent not within the budget line item for settlements, is fully paid for by third-party insurance.

For the avoidance of doubt, when used in this Section 6.6, the term “third-party insurance” does not include self-insurance. Nothing in this Section 6.6 is intended to require that the Authority to purchase third-party insurance.

6.6.3 Settlements Not Covered by Insurance In Excess of Settlement Cap with Chairman Consent. The Chief Executive Officer is authorized to settle any dispute, claim or controversy (other than those addressed by Section 6.5) not covered by third-party insurance in excess of the Settlement Cap without first obtaining the approval of the Governing Board if each of the following two conditions is met:

- A. The Chief Executive Officer determines that the Authority will likely suffer a financial or opportunistic loss by waiting until the next regularly scheduled meeting of the Governing Board to settle the dispute, claim or controversy; and
- B. The Chairman of the Governing Board has first consented to the specific settlement.

6.6.4 ~~6.6.3~~ Notification of Governing Board. The Governing Board must be notified of any settlement made without its prior approval pursuant to the authorization contained in either Section 6.6.1 or 6.6.1, 6.6.2 or 6.6.3 above at its first Board meeting following the settlement. In regard to ~~settlements over \$50,000, notice will~~any settlement in excess of the Settlement Cap, notice must also be given to the Governing Board as soon as practicable but in any event within ten (10) business days—following the effective date of the settlement. Failure to timely provide notice to the Governing Board shall not affect the settlement.

6.6.5 Delegation of Authority.

A. The Chief Executive Officer may delegate his or her authority to settle a dispute, claim or controversy pursuant to this Section 6.6 to the following permitted delegees; provided that, with respect to any delegee, the maximum settlement amount that may be delegated to such delegee may not exceed the maximum settlement amount set forth opposite the title of such delegee:

<u>Permitted Delegee</u>	<u>Maximum Settlement Amount</u>
<u>General Manager</u>	<u>Not to exceed \$100,000</u>
<u>Director of Risk Management</u>	<u>Not to exceed \$50,000</u>
<u>Third-Party Administrator retained by Authority</u>	<u>Not to exceed \$3,000</u>



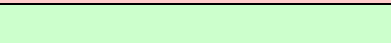
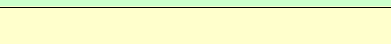

B. Any delegation by the Chief Executive Officer pursuant to this Section 6.6.5 shall be in writing and a copy of such delegation shall be filed with the books and records of the Authority. The Chief Executive Officer may issue a “blanket delegation” pursuant to this Section 6.6.5 such that the delegation is not limited to a single dispute, claim or controversy.

I hereby certify that the foregoing Administrative Rule 6 was adopted by the Governing Board of the Authority at its duly called meeting on July 28, 2010, and was further amended by the Governing Board of the Authority at its duly called ~~meeting~~meetings on March 22, ~~2012~~2012 and May 13, 2015.

Deborah ~~Henderson~~Morrow, Assistant Secretary

Document comparison by Workshare Compare on Wednesday, May 06, 2015
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Padding cell	

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ADMINISTRATIVE RULE 6

SUBJECT: DISPUTE RESOLUTION

EFFECTIVE DATE: May 13, 2015¹

SCOPE:

This Administrative Rule sets forth the processes by which the Authority resolves disputes involving its procurement process, its contracts for the purchase and/or sale of goods, supplies, services or other materials, and other claims, generally, which would include for example claims against the Authority related to torts and workers compensation, which may or may not involve litigation.

AUTHORITY:

Authority for the establishment of this Administrative Rule is as follows:

Part II, Chapter 343, Florida Statutes

RULE 6: Dispute Resolution

- 6.1 **Purpose of Rule.** The Governing Board has established this Administrative Rule for the following purposes:
- A. To set forth procedures for the resolution of disputes related to the Authority's Procurement process;
 - B. To set forth procedures for the resolution of disputes related to Contracts to which the Authority is a party; and
 - C. To set forth rules that apply to all other disputes involving the Authority, including tort claims and workers' compensation claims.
- 6.2 **Application.** The provisions of **Section 6.3** shall apply to all disputes. All disputes that relate to the Authority's Procurement process shall be resolved in accordance with the applicable process set forth in **Section 6.4**. All disputes that relate to Contracts with the Authority shall be resolved in accordance with the process set forth in **Section 6.5**. The provisions of **Section 6.6** shall apply to the settlement of all claims (other than those addressed by **Section 6.5**), including those involving workers' compensation and tort claims.
- 6.3 **General Provisions Applicable to All Disputes.** The following provisions shall apply to all disputes, regardless of whether such disputes relate to the Authority's Procurement process, Contracts with the Authority, or any other claims:

¹ This Administrative Rule was adopted by the Governing Board at its meeting held on July 28, 2010 and was amended by the Governing Board at its meetings held on March 22, 2012 and May 13, 2015.

6.3.1 **No Waiver of Sovereign Immunity.** Pursuant to Florida Statutes § 768.28, the State of Florida, for itself and for its agencies and subdivisions, has agreed to waive sovereign immunity for torts, but only to the extent specified therein. No provision of any Contract nor any provision of these Administrative Rules shall be interpreted to constitute a waiver by the Authority of the benefits afforded to it by sovereign immunity beyond the specific amounts waived by Florida Statutes § 768.28.

6.3.2 **Federal Transit Administration.**

- A. **FTA Notification.** The Authority shall notify the FTA of all disputes arising from the Procurement process and all Contract Disputes, which, in either case, involve the expenditure of Federal funds, and shall keep the FTA apprised of the status of same.
- B. **FTA Review.** Under certain circumstances the FTA will review a Procurement dispute or Contract Dispute that involves a Procurement made with Federal funds, however, such review is limited to determining whether the Authority has failed to follow its protest procedures.

6.3.3 **Arbitration or Judicial Action.** With respect to any dispute involving the Procurement process or Contracts to which the Authority is a party, each Bidder, Proposer, and Contractor, as applicable, agrees that, with respect to any such dispute, the Authority shall have the sole discretion to determine whether the parties should first attempt to resolve said dispute by mediation. Each Bidder, Proposer, and Contract, as applicable, further agrees that should the Authority not elect to first attempt to resolve the dispute by mediation, or should mediation be unsuccessful, the Authority shall have the sole discretion to determine whether said dispute should be resolved by either a court of law or by binding arbitration. In that regard the following provisions shall apply:

- A. **Mediation.** If the Authority decides that the parties to a dispute should first attempt to resolve the dispute by mediation, then the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, judicial action or some other dispute resolution procedure. Any such mediation shall be held in Orange County, Florida.
- B. **Arbitration.** If the Authority decides that a dispute should be resolved by arbitration, then arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any such arbitration shall be held in Orange County, Florida.

C. **Judicial Action.** If the Authority decides that a dispute should be resolved in a court of law, then the following provisions shall be applicable:

(i) **Jurisdiction and Venue.** Any action, suit or proceeding arising in connection with the dispute shall be brought exclusively in the Ninth Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division.

(ii) **JURY TRIAL WAIVER. THE AUTHORITY, ON ONE HAND, AND THE BIDDER, PROPOSER OR CONTRACTOR, AS APPLICABLE, ON THE OTHER, EACH AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL THEN OR THEREAFTER EXIST WITH REGARD TO THE CONTROVERSY OR CLAIM, OR ANY COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THE FOREGOING WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.**

With respect to this subsection, it is subject to the specific provisions of **Section 6.3.6** below, and nothing contained herein shall grant to any party any rights with respect to any protest which may be filed under **Section 6.4** below.

6.3.4 **Director of Procurement.** All notices and other communications which are required to be filed with the Director of Procurement pursuant to this Rule 6 shall be in writing and shall be sent to the Director of Procurement at the following address:

LYNX Central Station
Procurement Department
455 North Garland Avenue
Orlando, Florida 32801
Attention: Director of Procurement

6.3.5 **Severability.** If any portion of this Rule 6 is determined to be invalid or unenforceable, the balance of this Rule 6 shall remain in effect.

6.3.6 **Status of Protest with Respect to Procurement Protest.** Nothing contained in any procurement dispute resolution procedure, including the provisions under **Section 6.4**, shall grant any Protesting Party any right as to that procedure (including any right to file a Procurement Protest or, if filed, any right with respect to the processing of that Procurement Protest by the Authority) including any right to enter into a Contract with the Authority. Rather, the right to protest

any action of the Authority under **Section 6.4**, or under any component thereof, including before the SEC or the Director of Procurement, shall be a matter of privilege, as any protest shall solely be for the benefit of the Authority. The resolution of any protest shall be solely within the discretion of the Authority, including within the discretion of those individuals or entities designated herein for hearing and resolving any protest, and any decision by the Authority shall be final and binding and not subject to any further appeal or protest. Any party submitting any proposal with the Authority shall specifically by virtue of filing any such proposal expressly agree to the provisions of this Section.

- 6.3.7 **Contact with Authority/No Solicitation or Contact During Procurement Dispute Process.** All prohibitions with respect to contact with Members and Officers of the Authority pursuant to **Section 4.7** of Administrative Rule 4 shall remain in effect until the resolution of the protest or the exhaustion afforded the Protesting Party under **Section 6.4** hereof.

[Remainder of page intentionally left blank.]

SECTION 6.4:

THE PROCEDURES SET FORTH IN SECTION 6.4 (INCLUDING SECTION 6.4.1 & 6.4.2) SHALL APPLY TO ALL DISPUTES ARISING FROM THE PROCUREMENT PROCESS.

- 6.4 **Disputes Involving Procurement Process – Applicable Procedure.** All disputes that arise from the Procurement process shall be resolved in accordance with one of the two procedures set forth in either **Section 6.4.1** or **Section 6.4.2**. The procedure set forth in **Section 6.4.1** shall apply when only the Director of Procurement is responsible for the recommendation of award of a Contract or when the dispute relates to an issue arising before the Procurement is submitted to a Source Evaluation Committee. The procedure set forth in **Section 6.4.2** shall apply when only a Source Evaluation Committee is responsible for the recommendation of award of a Contract and the dispute relates to an issue arising after the Procurement is submitted to a Source Evaluation Committee.

Failure to timely and fully comply with each of the requirements in the applicable procedure shall, in the absolute discretion of the Director of Procurement, result in a waiver of the protest (collectively, a “**Waiver**”). Any Bidder or Proposer protesting the Procurement process or any award of a Contract thereunder is referred to in this Rule as a “**Protesting Party.**”

SECTION 6.4.1:

THE PROCEDURE SET FORTH IN THIS SECTION 6.4.1 SHALL APPLY WHEN: (1) ONLY THE DIRECTOR OF PROCUREMENT IS RESPONSIBLE FOR THE RECOMMENDATION OF AWARD OF THE CONTRACT, OR (2) WHEN THE DISPUTE RELATES TO AN ISSUE ARISING BEFORE THE PROCUREMENT IS SUBMITTED TO A SOURCE EVALUATION COMMITTEE.

- 6.4.1 **General.** The following procedure shall apply to all disputes arising from the Procurement process or the award of a Contract thereunder when: (1) only the Director of Procurement is responsible for the recommendation of award of the Contract, or (2) if the dispute relates to an issue arising before the Procurement is submitted to a Source Evaluation Committee (such as when the dispute relates to a submission requirement or a filing deadline).
- A. **Step 1 – Director of Procurement.** The initial arbiter of any dispute which is subject to this procedure shall be the Director of Procurement. The process by which disputes shall be resolved by the Director of Procurement is as follows:

1. **Procurement Protest; Deadline for Filing.** In order to initiate the dispute resolution process, the Protesting Party must file a formal written protest (“**Procurement Protest**”) with the Director of Procurement. The Procurement Protest must be filed before 5:00 p.m. (local time) on the fifth (5th) business day following (i) the posting date of the Director of Procurement’s recommendation of award, or (ii) if there is no recommendation yet made, then following the particular action that the Protesting Party wishes to appeal (e.g., a determination by the Director of Procurement that the bid by the Protesting Party is untimely or does not meet the necessary qualifications and therefore has been rejected). Failure to file the Procurement Protest by this deadline shall result in a Waiver by the Protesting Party. Failure of the Protesting Party to request a copy of the recommendation of award shall not extend the deadline for filing a Procurement Protest. A Procurement Protest is considered filed with the Director of Procurement upon his/her receipt.
2. **Requirement to Notify Person Awarded Contract.** The Protesting Party must also timely furnish a copy of the Procurement Protest to the Person who was recommended to be awarded the Contract (if a recommendation of award had been made) at or before the time the Protesting Party files the Procurement Protest under paragraph 1 above. Failure to timely comply with the aforementioned requirement will result in the Procurement Protest being deemed untimely, and, as a consequence, result in a Waiver by the Protesting Party.
3. **Elements of Procurement Protest.** The Procurement Protest must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear, succinct and complete statement of the Protesting Party’s grounds for the Procurement Protest and the request for relief. Any supporting materials must be contained in said statement. No materials may be submitted in furtherance of the Procurement Protest after the timely submittal without the Authority’s approval, and can be disregarded by the Authority in its discretion.
 - c. the cash bond referenced in the following paragraph 4.

The Procurement Protest will be the sole basis for the Authority to review said Procurement Protest. Notwithstanding the foregoing, the Director of Procurement may, in his/her absolute discretion, seek additional materials regarding the Procurement Protest either

from the Protesting Party or from other sources, as set forth in paragraph 6 below.

4. **Requirement of Deposit to Proceed to Protest.** Concurrently with, and as a condition for, the filing of a Procurement Protest, the Protesting Party shall furnish to Director of Procurement along with filing the Procurement Protest a cash bond (in the nature of a check payable to the Authority) in an amount equal to two percent (2%) of the amount bid by the Protesting Party, but in no event less than \$1,000.00. However, the Protesting Party may, with the filing of the Procurement Protest, request a reduction in said cash bond which the Director of Procurement may, in her/her absolute discretion for good cause shown, reduce, but in no event to less than \$1,000.00 (thus, in any event, the Protesting Party if it seeks a reduction in the cash bond under the foregoing clause, must post with the Procurement Protest a cash bond in the amount of \$1,000.00 at the time of filing the Procurement Protest). Said cash bond shall be held by the Authority for the purpose of paying any expenses (including its attorneys' fees) incurred by the Authority in processing the Procurement Protest. Further, if it is determined by the Authority that the Procurement Protest is without merit, the Authority may assess against the Protesting Party an additional amount to cover any third-party expenses (e.g., attorneys' fees) incurred by the Authority. In the event the Procurement Protest is successful and ultimately affirmed by the final deciding body or person, then the Authority may consider (but is not obligated to make) a refund to the Protesting Party of all or a portion of said cash bond.

5. **Suspension of Procurement Process.** The Procurement process (including the awarding of the Contract) shall be suspended upon receipt of a Procurement Protest which satisfies the filing and content requirements set forth above. Such suspension shall continue until the earlier of:
 - a. the resolution of the Procurement Protest;
 - b. the exhaustion of all remedies afforded the Protesting Party under this procedure;
 - c. a determination by the Chief Executive Officer, in his or her absolute discretion (and not subject to any further appeal or review), that the award of the Contract without delay is in the best interest of the Authority; or
 - d. a determination by the Chief Executive Officer that the Procurement Protest is frivolous in nature.

6. **Decision by Director of Procurement.** The Director of Procurement shall render a written decision as to the matters set forth in the Procurement Protest.
 7. **Hearing.** The Director of Procurement may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Protest. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Director of Procurement and will be presided over by the Director of Procurement. Failure by the Protesting Party to attend and participate in any hearing required by the Director of Procurement will result in a Waiver by the Protesting Party. Nothing contained will require any such hearing and the Director of Procurement may resolve the Procurement Protest based solely upon the Procurement Protest and such other information as the Director of Procurement may desire or obtain in his/her discretion.
 8. **Additional Information for Director of Procurement.** Nothing contained in this Section will restrict or prohibit the Director of Procurement from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
 9. **Appeal Right.** The decision of the Director of Procurement shall be final and conclusive unless the Protesting Party timely appeals the decision in accordance with **Section 6.4.1.B** below.
- B. **Step 2 – General Manager.** The appeal of any decision of the Director of Procurement shall be rendered by the General Manager. If at any time the Authority does not have a General Manager, the appeal shall be rendered by such other Senior Officer as designated by the Chief Executive Officer in writing. Any such designation shall only be effective for the particular appeal to which such designation relates and a copy of the written designation shall be filed with the books and records of the Authority. The process by which appeals shall be rendered by the General Manager is as follows:
1. **Procurement Appeal; Deadline for Filing.** If the Protesting Party desires to appeal the decision of the Director of Procurement, the Protesting Party must file a formal written appeal (“**Procurement Appeal**”) with the Director of Procurement in accordance with the requirements below. The Procurement Appeal must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the date the Director of Procurement renders its decision in accordance with Section **6.4.1.A(6)**. Failure

to file a Procurement Appeal by this deadline will result in a Waiver by the Protesting Party. A Procurement Appeal is considered filed with the Director of Procurement upon receipt.

2. **Elements of Procurement Appeal.** The Procurement Appeal must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear explanation of either or both of the following:
 - (i) why the decision reached by the Director of Procurement was incorrect and/or
 - (ii) in what way the Director of Procurement failed to adhere to the terms of this dispute resolution procedure. No further material or support may be submitted by the Protesting Party.
 - c. The cash bond referenced in paragraph A(4) shall remain for any expenses incurred by the Authority in the appeal process.
3. **Additional Information for General Manager.** Nothing contained in this Section will restrict or prohibit the General Manager from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
4. **Hearing.** The General Manager may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Appeal. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the General Manager and will be presided over by the General Manager. Failure by the Protesting Party to attend and participate in any hearing required by the General Manager will result in a Waiver by the Protesting Party.
5. **Decision by General Manager.** The General Manager shall render a written decision as to the matters set forth in the Procurement Appeal.
6. **Final Decision.** The decision rendered by the General Manager shall be final and binding upon the Protesting Party, and shall not be subject to any further appeal.

SECTION 6.4.2:

THE PROCEDURE SET FORTH IN THIS SECTION 6.4.2 SHALL ONLY APPLY IF: (1) A SOURCE EVALUATION COMMITTEE IS RESPONSIBLE FOR THE RECOMMENDATION OF AWARD OF THE CONTRACT AND (2) THE DISPUTE RELATES TO AN ISSUE ARISING AFTER THE PROCUREMENT IS SUBMITTED TO THE SOURCE EVALUATION COMMITTEE.

6.4.2 **General.** The following procedure shall apply to all disputes arising from the Procurement process when: (1) a Source Evaluation Committee is responsible for the recommendation of award of the Contract and (2) the dispute relates to an issue arising after the Procurement is submitted to the Source Evaluation Committee. If a dispute relates to a matter that arises before the Procurement has been submitted to the Source Evaluation Committee (such as when the dispute relates to a submission requirement or a filing deadline), then, in that case, the dispute shall instead be resolved in accordance with the procedure set forth in **Section 6.4.1.**

A. **Step 1 – Director of Procurement.** The initial arbiter of any dispute which is subject to this procedure shall be the Director of Procurement. The process by which disputes shall be resolved by the Director of Procurement is as follows:

1. **Procurement Protest; Deadline for Filing.** In order to initiate the dispute resolution process, the Protesting Party must file a Procurement Protest with the Director of Procurement. The Procurement Protest must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the posting date of the Source Evaluation Committee's recommendation of award. Failure to file a Procurement Protest by this deadline will result in a Waiver by the Protesting Party. Failure of the Protesting Party to request a copy of the recommendation of award shall not extend the deadline for filing a Procurement Protest. A Procurement Protest is considered filed with the Director of Procurement upon his/her receipt.
2. **Requirement to Notify Person Awarded Contract.** The Protesting Party must also mail a copy of the Procurement Protest to the Person who was recommended to be awarded the Contract at or before the time the Protesting Party files the Procurement Protest. Failure to timely comply with the aforementioned requirement will result in the Procurement Protest being deemed untimely, and, as a consequence, result in a Waiver by the Protesting Party.

3. **Elements of Procurement Protest.** The Procurement Protest must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear statement of the Protesting Party's grounds for the protest and the request for relief.
 - c. the cash bond referenced in the following paragraph 4.

The Procurement Protest must be based solely upon the materials submitted to the Authority for the award and will be the sole basis for the Authority to review the Procurement Protest. Notwithstanding the foregoing, the Director of Procurement may, in his/her absolute discretion, seek additional materials regarding the Procurement Protest either from the Protesting Party or from other sources, as set forth in paragraph 6 below.

4. **Requirement of Deposit to Proceed to Protest.** Concurrently with, and as a condition for, the filing of a Procurement Protest, the Protesting Party shall furnish to Director of Procurement along with filing the Procurement Protest a cash bond (in the nature of a check payable to the Authority) in an amount equal to two percent (2%) of the amount bid by the Protesting Party, but in no event less than \$1,000.00, **provided, however,** the Protesting Party may, with the filing of the Procurement Protest, request a reduction in said cash bond which the Director of Procurement may, in her/her discretion for good cause shown, reduce, but in no event to less than \$1,000.00 (thus, in any event, the Protesting Party if it seeks a reduction in the cash bond under the foregoing clause, must post with the Procurement Protest a cash bond in the amount of \$1,000.00 at the time of filing the Procurement Protest). Said cash bond shall be held by the Authority for the purpose of paying any expenses (including its attorneys' fees) incurred by the Authority in processing the Procurement Protest. Further, if it is determined by the Authority that the Procurement Protest is without merit, the Authority may assess against the Protesting Party an additional amount to cover any third-party expenses (e.g., attorneys' fees) incurred by the Authority. In the event the Procurement Protest is successful and ultimately affirmed by the final deciding body or person, then the Authority may consider (but is not obligated to make) a refund to the Protesting Party of all or a portion of said cash bond.
5. **Suspension of Procurement Process.** The Procurement process (including the awarding of the Contract) shall be suspended upon receipt of a Procurement Protest which satisfies the filing and

content requirements set forth above. Such suspension shall continue until the earlier of:

- a. the resolution of the protest;
 - b. the exhaustion of all remedies afforded the Protesting Party under this Procurement Protest Procedure;
 - c. a determination by the Chief Executive Officer in his or her absolute discretion (which will not be subject to any review) that the award of the Contract without delay is reasonably in the best interest of the Authority; or
 - d. a determination by the Chief Executive Officer that the Procurement Protest is frivolous in nature.
6. **Additional Information for Director of Procurement.** Nothing contained in this Section will restrict or prohibit the Director of Procurement from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
7. **Hearing.** The Director of Procurement may, in his/her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Protest. The Director of Procurement may, but it not obligated to, require that the Source Evaluation Committee be in attendance at the hearing and make determinations with respect to any aspect of the Procurement Protest as requested by the Director of Procurement, if any; **provided, however,** that the Director of Procurement reserves all rights to make a final determination with respect to the Procurement Protest, including if so requested by the Director of Procurement a “rescoring” or “reranking” by the Source Evaluation Committee. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Director of Procurement and will be presided over by the Director of Procurement. Failure by the Protesting Party to attend and participate in any hearing required by the Director of Procurement will result in a Waiver by the Protesting Party.
8. **Decision by Director of Procurement.** The Director of Procurement shall render a written decision as to the matters set forth in the Procurement Protest.
9. **Appeal Right.** The decision of the Director of Procurement shall be final and conclusive unless the Protesting Party timely appeals the decision in accordance with **Section 6.4.2.B** below.

B. **Step 2 – General Manager.** The appeal of any decision of the Director of Procurement shall be rendered by the General Manager. If at any time the Authority does not have a General Manager, the appeal shall be rendered by such other Senior Officer as designated by the Chief Executive Officer in writing. Any such designation shall only be effective for the particular appeal to which such designation relates and a copy of the written designation shall be filed with the books and records of the Authority. The process by which appeals shall be rendered by the General Manager is as follows:

1. **Procurement Appeal; Deadline for Filing.** If the Protesting Party desires to appeal the decision of the Director of Procurement, the Protesting Party must file a Procurement Appeal with the Director of Procurement. The Procurement Appeal must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the date the Director of Procurement renders its decision in accordance with Section **6.4.2.A(6)**. Failure to file a Procurement Appeal by this deadline will result in a Waiver by the Protesting Party. A Procurement Appeal is considered filed with the Director of Procurement upon receipt.
2. **Elements of Procurement Appeal.** The Procurement Appeal must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear explanation of either or both of the following: (i) why the decision reached by the Director of Procurement was incorrect and/or (ii) in what way the Director of Procurement failed to adhere to the terms of this dispute resolution procedure. No further material or support may be submitted by the Protesting Party.
 - c. The cash bond referenced in paragraph A(4) shall remain for any expenses incurred by the Authority in the appeal process.
3. **Additional Information for General Manager.** Nothing contained in this Section will restrict or prohibit the General Manager from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
4. **Hearing.** The General Manager may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those

specific matters set forth in the Procurement Appeal. The General Manager may require that the Source Evaluation Committee be in attendance at the hearing and make determinations with respect to any aspect of the Procurement Appeal; provided, however, that the General Manager reserves all rights to make a final determination with respect to the Procurement Appeal. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the General Manager and will be presided over by the General Manager. Failure by the Protesting Party to attend and participate in any hearing required by the General Manager will result in a Waiver by the Protesting Party.

5. **Decision by General Manager.** The General Manager shall render a written decision as to the matters set forth in the Procurement Appeal.
6. **Final Decision.** The decision rendered by the General Manager shall be final and binding upon the Protesting Party.
7. **Special Rule for when General Manager is a member of the Source Evaluation Committee.** If the General Manager is a member of the Source Evaluation Committee for the Procurement which is the subject of the dispute, the appeal of any decision of the Director of Procurement shall be rendered by the Chief Executive Officer rather than the General Manager. Accordingly, when the General Manager is a member of the Source Evaluation Committee, the term “Chief Executive Officer” shall be substituted for the term “General Manager” wherever it appears in this **Section 6.4.2.B.**

6.4.3 **Status of Awards.** In regard to both **Section 6.4.1** and **6.4.2:**

- A. Nothing contained in this procedure shall afford to any party, including any Protesting Party, any right to receive an award of a Contract from the Authority or any right to protest as to the procedures so followed by the Authority. The process is solely for the benefit of the Authority and, as such, the Authority at all times, shall have the absolute discretion whether or not to dismiss a Procurement Protest and to award a Contract to any party, and to waive any irregularities or issues as to any submittal by the successful party.
- B. The ultimate award by the Authority of a Contract shall not be subject to any further appeal beyond that set forth in this **Section 6.4.** Once the Authority has approved the award of a Contract, that decision will be final and not subject to any further appeal.
- C. Notwithstanding the foregoing, should any party wish to institute a suit thereafter against the Authority, that party will be obligated to post a bond

in favor of the Authority for the amount of the Contract award and will reimburse the Authority for any legal fees and costs it has incurred as a result of said appeal (which will be covered by said bond). In the event any Protesting Party should bring an action against the Authority, the sole remedy available to the Protesting Party, if it is successful, is to recover from the Authority the amount of the cash bond posted by it in the dispute resolution process. The Authority shall have no other liability or obligation whatsoever to said Protesting Party.

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SECTION 6.5:

THE PROVISIONS SET FORTH IN SECTION 6.5 SHALL APPLY TO THE SETTLEMENT OF ALL DISPUTES ARISING FROM CONTRACTS TO WHICH THE AUTHORITY IS A PARTY.

6.5 **Settlement of Disputes.** The settlement of any and all controversies or claims arising out of or relating to any Contract to which the Authority is a party, or to any breaches thereof (collectively, "**Contract Disputes**") must be approved by the Governing Board, except as provided in either **6.5.1** or **6.5.2** below:

6.5.1 **Settlements of Contract Disputes involving Minor Contracts (i.e., Contracts of \$150,000 or less).** The Chief Executive Officer is authorized to settle any Contract Dispute without first obtaining the approval of the Governing Board if each of the following two conditions is met:

- A. The Contract which is the subject of the Contract Dispute is a Minor Contract; and
- B. The sum of (a) the settlement amount (when such amount is totaled with all other claims or judgments paid by the Authority arising out of the same incident or occurrence) and (b) the value of the Contract does not exceed \$150,000.

6.5.2 **Settlements of Contract Disputes if Timing is an Issue.** The Authority's Chief Executive Officer is authorized to settle any Contract Dispute without first obtaining the approval of the Governing Board, irrespective of whether the Contract Dispute involves a Minor Contract or a Major Contract, and irrespective of the amount of the settlement, if each of the following two conditions is met:

- A. The Chief Executive Officer determines that the Authority will likely suffer a financial or opportunistic loss by waiting until the next regularly scheduled meeting of the Governing Board to settle the dispute, claim or controversy; and
- B. The Chairman of the Governing Board has first consented to the specific settlement.

6.5.3 **Notification of Governing Board.** The Governing Board must be notified of any settlement made without its prior approval pursuant to the authorization contained in either **Section 6.5.1** or **6.5.2** at its first Board meeting following the settlement. In the case of settlements under **Section 6.5.2** above, notice will be given to the Governing Board as soon as practicable but in any event within ten (10) business days. Failure to timely provide notice to the Governing Board shall not affect the settlement.

6.5.4 **Delegation of Authority.** The Chief Executive Officer may delegate his or her authority to settle a Contract Dispute to any Senior Officer except, in the case of a

settlement pursuant to **Section 6.5.2**, as otherwise directed by the Chairman of the Governing Board. Any such delegation shall be effective for the particular Contract Dispute to which such delegation relates and a copy of the written delegation shall be filed with the books and records of the Authority.

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SECTION 6.6:

THE PROVISIONS SET FORTH IN SECTION 6.6 (INCLUDING SECTION 6.6.1 – 6.6.3) SHALL APPLY TO ALL DISPUTES (OTHER THAN THOSE ADDRESSED BY SECTION 6.5), INCLUDING THOSE INVOLVING WORKERS' COMPENSATION AND TORTS.

6.6 **Settlement of Disputes.** The settlement of any dispute, claim or controversy involving the Authority (other than those addressed by **Section 6.5**), including those that arise from or that relate to torts and workers' compensation, must be approved by the Governing Board, except as provided in either **Section 6.6.1**, **6.6.2** or **6.6.3** below:

6.6.1 **Settlements up to Settlement Cap (as defined below).** The Chief Executive Officer is authorized to settle any dispute, claim or controversy (other than those addressed by **Section 6.5**) without first obtaining the approval of the Governing Board if each of the following two conditions is met:

- A. The settlement amount does not exceed \$200,000 for any dispute, claim or controversy by one person or \$300,000 for all disputes, claims or controversies arising out of the same incident or occurrence (the "**Settlement Cap**"); and
- B. The settlement amount is within the budget line item for settlements or is covered by third-party insurance. The Settlement Cap is based upon the limited waiver of sovereign immunity set forth in Section 768.28, Florida Statutes. To the extent that Section 768.28, Florida Statutes, is amended to increase or decrease the limited waiver of sovereign immunity, the Settlement Cap shall be equal to such increased or decreased amount.

6.6.2 **Settlements in Excess of Settlement Cap Covered by Insurance.** If a dispute, claim or controversy is covered by third-party insurance, the Chief Executive Officer is authorized to settle such dispute, claim or controversy (other than those addressed by **Section 6.5**) in excess of the Settlement Cap without first obtaining the approval of the Governing Board if each of the following two conditions is met:

- A. The settlement amount in excess of the Settlement Cap is fully paid for by third-party insurance; and
- B. The portion of the settlement amount up to the Settlement Cap is within the budget line item for settlements or, to the extent not within the budget line item for settlements, is fully paid for by third-party insurance.

For the avoidance of doubt, when used in this **Section 6.6**, the term "third-party insurance" does not include self-insurance. Nothing in this **Section 6.6** is intended to require that the Authority to purchase third-party insurance.

6.6.3 **Settlements Not Covered by Insurance In Excess of Settlement Cap with Chairman Consent.** The Chief Executive Officer is authorized to settle any dispute, claim or controversy (other than those addressed by **Section 6.5**) not covered by third-party insurance in excess of the Settlement Cap without first obtaining the approval of the Governing Board if each of the following two conditions is met:

- A. The Chief Executive Officer determines that the Authority will likely suffer a financial or opportunistic loss by waiting until the next regularly scheduled meeting of the Governing Board to settle the dispute, claim or controversy; and
- B. The Chairman of the Governing Board has first consented to the specific settlement.

6.6.4 **Notification of Governing Board.** The Governing Board must be notified of any settlement made without its prior approval pursuant to the authorization contained in either **Section 6.6.1**, **6.6.2** or **6.6.3** above at its first Board meeting following the settlement. In regard to any settlement in excess of the Settlement Cap, notice must also be given to the Governing Board as soon as practicable but in any event within ten (10) business days following the effective date of the settlement. Failure to timely provide notice to the Governing Board shall not affect the settlement.

6.6.5 **Delegation of Authority.**

- A. The Chief Executive Officer may delegate his or her authority to settle a dispute, claim or controversy pursuant to this **Section 6.6** to the following permitted delegees; provided that, with respect to any delegee, the maximum settlement amount that may be delegated to such delegee may not exceed the maximum settlement amount set forth opposite the title of such delegee:

<u>Permitted Delegee</u>	<u>Maximum Settlement Amount</u>
General Manager	Not to exceed \$100,000
Director of Risk Management	Not to exceed \$50,000
Third-Party Administrator retained by Authority	Not to exceed \$3,000

- B. Any delegation by the Chief Executive Officer pursuant to this **Section 6.6.5** shall be in writing and a copy of such delegation shall be filed with the books and records of the Authority. The Chief Executive Officer may issue a “blanket delegation” pursuant to this **Section 6.6.5** such that the delegation is not limited to a single dispute, claim or controversy.

I hereby certify that the foregoing Administrative Rule 6 was adopted by the Governing Board of the Authority at its duly called meeting on July 28, 2010, and was further amended by the Governing Board of the Authority at its duly called meetings on March 22, 2012 and May 13, 2015.

Deborah Morrow, Assistant Secretary

Oversight Committee Information Item #4.A.

To: LYNX Board of Directors

From: Susan Black
GENERAL MANAGER
BRENDA HERNANDEZ
(Technical Contact)

Phone: 407.841.2279 ext: 6058

Item Name: Risk Management Committee Report

Date: 5/13/2015

A meeting of the Risk Management Committee was held on Wednesday, April 22, 2015. The Agenda Items were Insurance Broker Recommendations, Department Status Update and Claims Management.

The approved minutes for the February 2, 2014 Risk Management Committee meeting are attached.

LYNX Board of Directors Risk Management Committee has scheduled future meetings on the following dates:

- Wednesday, June 24, 2015
- Wednesday, August 19, 2015
- Wednesday, October 7, 2015
- Wednesday, December 16, 2015

LYNX
Central Florida Regional Transportation Authority
Monthly Risk Management Committee Meeting Minutes

PLACE: LYNX Central Station
455 N. Garland Avenue
Room 215
Orlando, FL 32801

DATE: February, 4 2015

TIME: 10:01 a.m.

Members in Attendance:

John Petrelli, Risk Manager, Orange County

Ray Scullian, Risk Manager, City of Orlando

Denise Lipscomb, Financial Services Manager, FDOT

Reginald Davis, Senior Manager for Risk Management, Osceola County

Members not in Attendance:

James Carnicella, Human Resources Director, Seminole County

1. Call to Order

The Chairman, John Petrelli, called the meeting to order at 10:01 a.m.

2. Approval of Minutes

The Chairman asked the Committee if there were any additions or deletions to the December 3, 2014 Minutes as presented.

3. Agenda Items

The Chairman asked if there were any comments or questions about previous meeting. Committee had no questions or comments.

Melanie Herman, Risk Management Consultant with LYNX, addressed the committee. Melanie Herman is the Chief Executive Officer for Nonprofit Risk Manager Center. She presented the Committee with an overview of the findings within the Risk Management Department. She presented with a timeline for the improvement of the department. She discussed division of labor and purpose. The timeline she had placed will come to a completion in April, 2015. Job descriptions have been updated to enable employees to prioritize tasks and responsibilities. Melanie Herman discussed the new possible department structure.

The Chairman recommended that all insurance expiration dates be coordinated.

Ms. Black informed the committee that there is a possibility that the security division of LYNX will be moved to Risk Management.

The Committee asked that the new broker come to the following Risk Management Committee meeting to give a presentation. Committee also asked about the procurement procedure regarding solicitation. Staff clarified the procurement process and the rules that govern it.

Ms. Black asked if the Committee would like to be involved in the self-funding conversation. Committee expressed that was not a necessity.

Meeting adjourned at 11:58 a.m.

Oversight Committee Information Item #4.B.

To: LYNX Board of Directors

From: **Blanche Sherman**
DIRECTOR OF FINANCE
Julie Caple
(Technical Contact)
Vicki Hoffman
(Technical Contact)

Phone: 407.841.2279 ext: 6100

Item Name: Finance and Audit Committee Report

Date: 5/13/2015

A meeting of the Finance and Audit Committee was held on Tuesday, May 5, 2015. The Agenda Items covered were:

Discussion of FY2016 Preliminary Budget Funding Model
Overview of "Agreement Regarding Funding of LYNX Pursuant to Funding Formula" (Master Agreement)

Minutes from the previous meeting held on Wednesday, March 18, 2015 are attached.

Tentative future meeting dates include:

Thursday, August 17, 2015
Friday, September 11, 2015

LYNX
Central Florida Regional Transportation Authority
Finance & Audit Committee Meeting Minutes

PLACE: **LYNX Central Station**
 455 N. Garland Avenue
 Conference Room, 2nd. Floor
 Orlando, FL 32801

DATE: **March 18, 2015**

TIME: **02:01 PM**

Members in Attendance:

Chairperson Chris McCullion, City of Orlando
Vice Chairperson Ray Walls, Orange County
Zoraida Cruz, Osceola County
Edward Bass, Seminole County
Lisa Buscher, FDOT

LYNX Staff in Attendance:

John Lewis, Chief Executive Officer
Blanche Sherman, Director of Finance
Pat Christiansen, LYNX' General Counsel

Members Absent:

1. Call to Order/Introduction

Chairperson Chris McCullion called the meeting to order at 02:01 PM.

2. Approval of Prior Meeting Minutes

Chris McCullion asked for approval of the prior meeting minutes. Pat Christensen, LYNX' General Counsel, asked that the minutes be amended to add his name or whoever is present. **Motion** was made and seconded to approve the Minutes of the January 15, 2015 Finance & Audit Committee as amended. The Motion passed unanimously.

3. Audit Agenda Items

✓ **Overview of FY2014 Annual Audit Results**

Chris McCullion called on Blanche Sherman, Director of Finance who introduced Ron Conrad, Partner with the firm of Cherry Bekaert LLP, to present an overview of the FY2014 Annual Audit Results.

Mr. Conrad stated that LYNX received a "clean opinion". He then reviewed the following items:

1. Scope of Services for LYNX
2. Required Communications
3. Draft Summary of Audit Results
4. Financial Highlights – Financial Position
5. Financial Highlights – Changes in Net Position

Mr. Conrad then briefly touched on accounting and auditing regulatory changes coming up in the future. Currently, there are no actual pension plans in the financial statements only disclosures of the pension plan. The Government is contemplating having pension plans added to business type financial statements. This is still in the theoretical/discussion stage.

GASB68 has been finalized which requires booking a liability for the net pension liability next year. In the past, as long as LYNX made payments equal to what the actuary said each year there is no liability. This is referred to as the annual required contribution.

Next year this will be changed to a balance sheet approach looking at a snapshot of how much will need to be paid out to participants in the future and how much is funded in cash and investments on the balance sheet. The difference will be shown on the financial statements.

The last change discussed by Mr. Conrad was the uniform grant requirements called the super circular. LYNX will be looking at its procurement requirements to make sure LYNX matches the new requirements. LYNX has an election to make as to whether LYNX wishes to delay implementation for a year. The requirements are designed for more transparency and federal involvement.

On the audit side, the auditor will have to look at the new grant requirements with regard to compliance and the overall audit process which will change in FY2016. New federal awards received after December 25, 2014 are subject to the new requirements.

Mr. Conrad stated that he will be presenting the audit results to the Oversight Committee at the March 26 meeting.

John Lewis mentioned that when the auditor presents the results to the Oversight Committee the members may ask the opinion of the Finance & Audit Committee. Chris McCullion stated that as the Chairperson of the Finance & Audit Committee he will be attending all meetings of the Oversight Committee.

✓ **Overview of FY2016 Preliminary Operating Budget**

Chris McCullion called on Blanche Sherman to present the second agenda item.

Ms. Sherman provided a brief overview of the FY2016 preliminary operating budget based on the budget assumptions presented in January 2015 and the funding model adopted in January 2013 as follows:

- Maximize current service levels through efficiencies
- Apply additional Flex (NeighborLink) services, where appropriate
- Maximize use of anticipated Advertising Revenue
- Salary increases consistent with Funding Partners
- Anticipated impact of a new Union contract
- Continuation of Fuel Hedging Program, as appropriate
- Continued application of reductions based on LYNX ownership of paratransit vehicles
- Continuation of Bio-diesel Program, as appropriate
- Evaluate LYNX' current health insurance program for consideration of becoming self-insured There will be a presentation on health insurance after the budget overview.

Ms. Sherman then discussed the FY2016 Preliminary Operating Budget in comparison to the FY2015 Amended Budget including the following:

➤ Funding Sources

	FY2015 Amended Budget	FY2016 Preliminary Budget	Dollar Amount Change	% Change
Fund Balance *	\$ 1,665,286	571,571	\$ (1,093,715)	-66%
Customer Fares	29,530,910	29,344,754	(186,156)	-1%
Contract Services	6,593,296	5,398,265	(1,195,031)	-18.1%
Advertising on Buses	1,875,000	2,050,000	175,000	9.3%
Advertising - Trade	30,000	30,000	-	0.0%
Interest & Other Income	417,000	462,853	45,853	11.0%
Federal	15,875,297	15,821,792	(53,505)	-0.3%
State	13,263,175	14,137,823	874,648	6.6%
Local	57,326,743	58,676,420	1,349,677	2.4%
Total Operating Revenue	\$ 126,576,707	\$126,493,478	\$ (83,229)	-0.1%

➤ Expenses

	FY2015 Amended Budget	FY2016 Preliminary Budget	Dollar Amount Change	% Change
Salaries/Wages/Fringes	\$ 70,796,959	\$ 73,142,628	\$ 2,345,669	3.3%
Other Services	11,138,951	10,861,200	(277,751)	-2.5%
Fuel	16,108,610	13,220,707	(2,887,903)	-17.9%
Materials & Supplies	7,411,652	8,284,043	872,391	11.8%
Utilities	1,439,337	1,454,571	15,234	1.1%
Casualty and Liability	1,399,850	1,524,850	125,000	8.9%
Taxes & Tags	409,841	434,605	24,764	6.0%
Purchased Transportation	16,929,333	16,259,095	(670,238)	-4.0%
Miscellaneous	676,674	826,779	150,105	22.2%
Leases	265,500	485,000	219,500	82.7%
Total Operating Expenses	\$126,576,707	\$ 126,493,478	\$ (83,229)	-0.1%

➤ Local Funding

LYNX FY2016 Preliminary Local Funding					
	FY2015 Amended Budget		Preliminary Regional Model Need for FY2016	Net Increase (Decrease)	Percentage Increase (Decrease)
Operating Funding					
Orange County	\$ 40,321,585 *		\$ 39,744,904 *	\$ (576,681)	-1.4%
Osceola County	5,479,172 *		5,931,221 *	452,049	8.3%
Seminole County	6,249,068		6,218,460	(30,608)	-0.5%
City of Orlando	3,895,598 *		4,046,660 *	151,062	3.9%
City of Orlando - LYMMO	2,060,215		2,305,411	245,196	11.9%
Subtotal	<u>\$ 58,005,638</u>		<u>\$ 58,246,656</u>	<u>\$ 241,018</u>	0.4%
St. Cloud	161,999		161,999	\$ -	0.0%
Altamonte Springs	120,900		120,900	-	0.0%
Sanford	93,000		93,000	-	0.0%
Lake County	242,180		259,990	17,810	7.4%
Subtotal	<u>\$ 618,079</u>		<u>\$ 635,889</u>	<u>\$ 17,810</u>	2.9%
Subtotal Operating Funding	<u>\$ 58,623,717</u>		<u>\$ 58,882,545</u>	<u>\$ 258,828</u>	0.4%
Capital Contributions					
Orange County	\$ 1,687,947		\$ 1,701,304	\$ 13,357	0.8%
Osceola County	193,753		203,270	9,517	4.9%
Seminole County	216,984		214,016	(2,968)	-1.4%
Subtotal	<u>\$ 2,098,684</u>		<u>\$ 2,118,590</u>	<u>\$ 19,906</u>	0.9%
Total Local Funds	<u>\$ 60,722,401</u>		<u>\$ 61,001,135</u>	<u>\$ 278,734</u>	0.5%

**Includes prepaid funding from Orange County, Osceola County, and City of Orlando for new Service Development routes.*

A detailed summary of the preliminary budget changes will be provided by Ms. Sherman to Committee members.

The group discussed including a review of the funding model in the May meeting.

✓ **Health Insurance Cost Containment – Self-Insurance Evaluation**

Chris McCullion called on Blanche Sherman who introduced Joshua Rubich, Area Vice President with the firm of Arthur J. Gallagher & Co., to present an introduction to self-insurance.

Mr. Rubich first discussed how the final renewal decrease of 2% for FY2015 was based on a combination of negotiations, plan design changes, and use of an alternative network combined with another month of claims experience.

Mr. Rubich then provided an overview of the following items:

- The “Mechanics” of Moving from Fully-insured to Self-Funding
- Fixed Costs
- Stop Loss Contract
- Components of Cost: Self-Funded vs Fully-Insured
- Cigna ASO and Stop Loss Options
- Pros and Cons of Self-Funding: Financial
 - Pros
 - Minimize annual rate increases
 - Reduce insurer’s profits
 - Lower retention and risk charges
 - Hold and invest reserves
 - Cash flow
 - Reduce state premium tax that is built into premiums
 - Remove PPACA insurer fee (2-3%)
 - Remove state mandates/requirements
 - Cons
 - Assume greater risk
 - Inconsistent monthly costs
 - Not ideal for companies experiencing layoffs or down sizing
 - Pay PCORI and Transitional Reinsurance Premium
 - Accrue for outstanding claims
- Pros and Cons of Self-Funding: Administrative
 - Pros
 - Control the plan
 - Less likely to change carrier/TPA and networks to obtain better rates
 - Increased flexibility in benefit plan design
 - Own the claims data and receive more extensive reports and detailed analysis
 - Cons
 - Additional cash flow management
 - 6055 reporting
 - May receive appeals (infrequently) but can pay additional administration fee to transfer fiduciary responsibility with most administrators
- Administrative Fees- Self Insured vs Fully-Insured

	<u>Self-Insured</u>	<u>Fully-Insured</u>
Healthcare Reform	½ - 1% of total claims	3 - 4% of premium
Administrative Fees	5 – 8% of total claims	11 - 13% of premium
Stop Loss (pooling charges)	5 – 8% of total claims	6 - 8% of premium
Total Charges	10.5 – 17%	20 - 25%

- Other Cost Saving Options with Self-Funding

Mr. Rubich presented three (3) charts showing actual fully-insured expenses vs illustrative self-funded expenses for CY2012, CY2013, and CY2014. The charts also included approximate costs built into the fully-insured premium. In these illustrations, LYNX had a positive result in CY2012 and negative results in CY2013 and CY2014 being self-insured. The bottom line is that even though health care costs went up, the funding partners would have had to pay more if LYNX had been self-insured. These charts demonstrate that, for now, LYNX is making the right choice in being fully-insured.

The next step is to review the information for one more year's results which will be available in late July or early August. Then a decision can be made from the pricing determined from a stop loss perspective for the most current results and the projected FY2016 amounts.

The group discussed the timing of implementing a plan if LYNX decided to go self-insured and when it makes sense based on sustainability of increasing premiums vs being self-insured.

Topics discussed by the group during the presentation included the insurance cost split between employer and employees including recent changes in some plans, ways to deal with the highest risk employees including adjusting deductibles, the experience of going self-insured, and looking at programs to impact costs including wellness programs, motivating employees, health training coaches, biometric screenings, non-tobacco use, and Health Savings Account (HSA) incentives and penalties.

An update to the Committee may be provided in May if additional information is available.

✓ **Other Business**

Chris McCullion asked if there was any other business.

Pat Christiansen provided an update on NoPetro. All the agreements with LYNX have been signed. NoPetro has signed contracts with its contractor and the architect's contract has been signed for the renovation of the LYNX maintenance facility. NoPetro closed on the purchase of the land (10-12 acres). Three (3) acres are needed for the LYNX fueling facility. John Lewis stated that the bus leases have gone on Notice to Proceed.

Mr. Christiansen also provided an update on the Orange County funding agreement which is being reviewed and revised. Next year, the Master Agreement will go through the Finance & Audit Committee to be discussed and reviewed prior to going to the Board. Changes will include, starting in September or October of each fiscal year, the Committee is to be updated each month on the status of the funding agreements. Once the changes to Orange County have been signed off for this fiscal year, the changes will be incorporated in all the agreements.

Discussion ensued about the modeling agreement and continuing payments at the end of the fiscal year. In general, the modeling terms are agreed upon but no commitment is made until the funding agreement is signed by the funding partner. In the current standard agreement,

payments continue at the previous amount until a new agreement is signed with a true-up in December.

The meeting was adjourned at 4:14 PM.