

Action Agenda Item #7.E

To: LYNX Board of Directors

From: Edward Johnson
GENERAL MANAGER
Edward Johnson
(Technical Contact)

Phone: 407.841.2279 ext: 6058

Item Name: Authorization to Negotiate and Grant an Access Easement to the LYNX Executive Parking Lot for the Rida Development Corporation

Date: 3/22/2012

ACTION REQUESTED

Staff is seeking the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to negotiate and execute a grant of easement with 400 North Orange Ave, LLC (Rida Development Corporation) for the parcel of land east of the LYNX Central Station.

BACKGROUND

Staff is seeking the Board of Directors' authorization for the Chief Executive Officer (CEO) or designee to execute a fee simple, perpetual grant of easement for the parcel of land that is adjacent to the LYNX Central Station (LCS). The property is approximately 35,940 square feet and is currently being used as an administrative parking lot supporting the LCS.

The former and current property owners have been in discussion with LYNX for several years about the use of this parcel of land that will be incorporated in the design and construction of its proposed multiuse development. Since the approval of SunRail, the Rida Development Corporation has secured authorization from the City of Orlando to complete its final design for this new development that is proposed to be completed in 2014.

The development will occupy an entire city block along Orange Avenue bounded by Garland Avenue and Livingston Street and will sit directly alongside the region's most active transit hub and will include the existing LYNX Central Station in the site design. In addition to the connectivity to public transportation, the development will include a mix of residential, retail, office, hotel and meeting space, and will also incorporate several public spaces, including green space and a pedestrian breezeway for easy access for SunRail and LYNX riders to Orange Avenue and the Orange County Courthouse.

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The development will be a transformative project in Downtown Orlando and will become the city's first transit-oriented, mixed-use development tied directly to SunRail. It will serve as a model for aligning mixed-use development with maximized access to public transportation, including commuter rail, fixed-route and paratransit service and two downtown circulators with multimodal connectivity as a central design component.

The actual use of the easement will serve as an entranceway for pedestrian ingress and egress to an open park for the property. The easement will also allow for the installation of signage and way-finding information.

LYNX and its funding partners reserve the right to construct along the easement a proposed overhead rail line for a future light rail system with other associated utilities to support the proposed public facility. Additionally, LYNX or other local jurisdictions may want to secure the easement for other public transportation purposes. Rida Development would be required, at its own expense, to relocate any utilities that it may have constructed along the easement that may interfere with the new public facility construction.

Attached is a draft agreement which legal counsel for LYNX is negotiating with the property owners' legal representative.

FISCAL IMPACT

The Rida Development Corporation shall submit at the time of executing the proposed easement a check in the amount of \$10.00, as consideration, payable to LYNX.

This instrument was prepared
by and should be returned to

Peter L. Lopez, Esquire
Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
215 North Eola Drive
Orlando, Florida 32802

GRANT OF EASEMENTS

THIS GRANT OF EASEMENTS (hereinafter referred to as the “Easement”) is hereby made and executed as of the ___ day of _____, 2012, by **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX**, whose address is 455 North Garland Avenue, Orlando, Florida 32801 (hereinafter referred to as the “Grantor”) to and in favor of **400 NORTH ORANGE, LLC**, a Delaware limited liability company, whose address is c/o Rida Development Corp., 3120 Southwest Freeway, Suite 200, Houston, Texas 77098 (hereinafter together referred to as “Grantee”);

WITNESSETH:

WHEREAS, Grantee is the record owner of fee simple title to that certain other parcel of real property located in Orange County, Florida, which is more particularly described on **Exhibit “A”** attached hereto (hereinafter referred to as the “Benefitted Property”);

WHEREAS, Grantor is the record owner of fee simple title to certain real property located in Orange County, Florida, which real property is more particularly described on **Exhibit “B”** attached hereto (hereinafter referred to as the “Easement Area”);

WHEREAS, the Benefitted Property and the Easement Area are contiguous to each other along their common boundary; and

WHEREAS, Grantee, as fee simple owner of the Benefitted Property, has requested that Grantor grant, declare and convey certain easements over, under and across the Easement Area for the benefit of the Benefitted Property, and Grantor has agreed to convey such easements, all upon such terms set forth herein below.

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows;

1. Grant of Access and Utilities Easement by Grantors Grantor hereby grants, declares and conveys to Grantee, as fee simple owner of the Benefitted Property, and the successors and assigns of Grantee in title to the Benefitted Property (collectively, the “Benefitted”

Owner”), together with their respective employees, agents, contractors, licensees, concessionaires, guests, tenants, sub-tenants of tenants, invitees, successors and assigns, a perpetual, and except as provided in paragraph 4 hereinbelow, an exclusive easement appurtenant on, over, across, under, upon and through the Easement Area for purposes of:

(a) Pedestrian ingress and egress to and from the Benefitted Property and for access for use and operation of the Surface Improvements (as defined below); and

(b) The installation, construction, maintenance, repair and replacement, from time to time, of walkway, entranceway, landscaping and park related improvements, including without limitation, signage, as well as kiosks(collectively, the “Surface Improvements”); and

(c) The installation, maintenance, operation, inspections, repair and replacement, from time to time, of such utility lines and related improvements and facilities, including without limitation, water lines, sewer lines, stormwater pipes, inlets and outfalls, electric lines, gas lines, cable and data lines and all such other utilities as may be necessary to provide utility service to the Benefitted Property (the “Utility Improvements”); provided, however, that any and all Utility Improvements shall be located underground (the Surface Improvements and Utility Improvements being hereinafter collectively referred to as the “Improvements”).

2. Duration The easements hereby created, granted and conveyed shall be perpetual in duration and may not be changed, amended, modified, canceled or terminated, except by instrument in writing executed by the then owners of the Easement Area and the Benefitted Property, and any and all mortgagees of any portion thereof.

3. Incidental Rights The easements hereby created, granted and conveyed include the creation of all incidental rights reasonably necessary for the use and enjoyment of the easements for their intended purposes, including, without limitation, the right of entry, access, ingress and egress for purposes of construction, maintenance, operation and repair of the Easement Area and the Improvements now or hereafter located within the Easement Area (the “Easement Rights”).

4. Use of Easement Area by Grantor’s Adjacent Property By acceptance of this Easement and the Easement Rights granted herein, Benefitted Owner acknowledges and agrees that so long as Grantor, or its successors or assigns, operate mass transit facilities on the real property owned by Grantor located adjacent and contiguous to the Easement Area< (the “Grantor’s Adjacent Lands”)>, the users of such mass transit facilities shall have a right of access over the Easement Area for the use and enjoyment of any Surface Improvements during all normal operating hours of such mass transit facilities. ≤

5. Relocation of Utility Improvements. Grantor hereby reserves the right to construct and operate an above-ground elevated rail line (the “Elevated Rail Line”) along the westernmost twenty feet (20’) of the Easement Area (the “Elevated Rail Line Area”), for use in connection with its mass transit facilities located on Grantor’s Adjacent Lands. In the event Grantor constructs the Elevated Rail Line above the Elevated Rail Line Area, at Grantor’s request, Grantee shall, at its

sole cost and expense, relocate any Utility Improvements which impede or otherwise interfere with any portion of the Elevated Rail Line.

6. Warranty of Title. Grantor hereby warrants to the Benefitted Owner that Grantor owns the fee simple title to the Easement Area and has good right and lawful authority to convey the easement hereby created, granted, declared and conveyed and that the Easement Area is free and clear of all mortgages or other matters which would prevent the use and enjoyment of the Easement Area for the purposes contemplated herein.

7. Construction, Maintenance and Repairs Within Easement Area. Benefitted Owner shall be responsible, at the Benefitted Owner's expense, to design, permit, install, construct, maintain, and repair all the Improvements within the Easement Area as the Benefitted Owner determines may be useful and necessary for the orderly use and development of the Benefitted Property.

8. Permits and Compliance with Laws. Benefitted Owner shall obtain all applicable federal, state and local permits, as required and when required, and shall comply with all applicable federal, state and local laws, rules and regulations including, with specificity, any applicable environmental laws, rules and regulation, in connection with the construction, maintenance, operation, modification and/or repair of the Improvements within the Easement Area. Benefitted Owner, by its acceptance of the benefits hereof, further agrees that it shall obtain all applicable federal, state and local permits, as required and when required, and shall comply with all applicable federal, state and local laws, rules and regulations including, with specificity, any applicable environmental laws, rules and regulation, in connection with the use by the Benefitted Owner of the Improvements within the Easement Area for the purposes contemplated herein. Grantor agrees to cooperate with Benefitted Owner and its agents, contractors or designees in connection with obtaining any such permit as may be required and agrees to promptly advise Benefitted Owner in writing and provide copies to the Benefitted Owner of any and all notices, demands or other correspondence received from any federal, state or local governmental agency, entity or office in connection with the Easement Area or Benefitted Owner's use of the Improvements located therein.

9. Indemnification. Benefitted Owner agrees to indemnify, save and hold Grantor and Grantor's officers, directors and employees harmless from and against any and all claim, loss, damage or expense, including reasonable attorneys' fees and costs incurred as a result of or arising out of the activities of Benefitted Owner, its agents, contractors and/or employees on the Easement Area.

10. No Public Dedication. Nothing contained in this Easement shall create or shall be deemed to create any easements or use rights in the general public or constitute a public dedication for any public use whatsoever.

11. Miscellaneous: The easements hereby granted and conveyed are easements appurtenant, and, with or without specific reference thereto, the conveyance of an interest in any portion of the Easement Area and the Benefitted Property shall be subject to the respective burdens and benefits of the easements hereby granted and conveyed to the same extent as if all of the terms of this instrument were set forth in such conveyance in full and shall run with the land and be

binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, any purchaser at a foreclosure sale, the successors and assigns of all of such parties, as well as the tenants, guests, agents, employees, customers, licensees and invitees of each of them. This Easement is to be governed by and construed in accordance with the laws of the State of Florida. The parties hereto expressly waive jury trial in any action relating to this Easement.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Easement to be executed in manner and form sufficient to bind them as of the date and year first above written.

Signed, sealed and delivered in the presence of the following witnesses:

**CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY, db/a
LYNX**

Printed Name

By: _____

Name: _____

Title: _____

“Grantor”

Printed Name

400 NORTH ORANGE, LLC, a Delaware limited liability company

Printed Name

By: _____

Ira Mitzner, President

“Grantee”

Printed Name

<

>
STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by _____ as _____ of **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY, d/b/a LYNX**, on behalf of the authority, who is personally known to me or produced _____ as identification and did/did not take an oath.

Printed Name: _____
Notary Public - State of Florida
Commission No.: _____
My Commission Expires: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by Ira Mitzner as President of **400 NORTH ORANGE, LLC**, a Delaware limited liability company, on behalf of the company, who is personally known to me or produced _____ as identification and did/did not take an oath.

Printed Name: _____
Notary Public - State of _____
Commission No.: _____
My Commission Expires: _____

EXHIBIT "A"

LOT 1, DUPONT CENTRE (A REPLAT), ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 16, PAGES 47 AND 48, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

LESS: A PARCEL OF LAND BEING PART OF LOT 1 OF DUPONT CENTRE (A REPLAT) AS RECORDED IN PLAT BOOK 16, PAGES 47 AND 48 PER THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE N 00° 32' 10" W, 18.68 FEET ALONG THE WEST LINE OF SAID LOT 1 AND THE EAST RIGHT-OF-WAY LINE OF THE CSX RAILROAD (R/W VARIES) TO THE POINT OF BEGINNING; THENCE CONTINUE N 00° 32' 10" W, 598.08 FEET ALONG SAID WEST LOT LINE AND EAST RIGHT-OF-WAY LINE TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF AMELIA STREET (70' R/W); THENCE DEPARTING SAID WEST LOT LINE AND EAST RIGHT-OF-WAY LINE S 89° 41' 13" E, 60.01 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO A POINT; THENCE S 00° 32' 10" E, 599.70 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF LIVINGSTON STREET (R/W VARIES); THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING COURSES AND DISTANCES: N 86° 42' 58" W, 37.58 FEET; THENCE S 89° 28' 13" W, 22.50 FEET TO THE POINT OF BEGINNING. (OFFICIAL RECORDS BOOK 4988, PAGE 1270) (60' ON THE WEST)

LESS: A PARCEL OF LAND BEING PART OF LOT 1 OF DUPONT CENTRE (A REPLAT) AS RECORDED IN PLAT BOOK 16, PAGES 47 AND 48 PER PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE N 00° 32' 10" W, 18.68 FEET ALONG THE WEST LINE OF SAID LOT 1 AND THE EAST RIGHT-OF-WAY LINE OF THE CSX RAILROAD (R/W VARIES) TO A POINT; THENCE DEPARTING SAID WEST LOT LINE AND EAST RIGHT-OF-WAY LINE N 89° 28' 13" E, 22.50 FEET TO A POINT; THENCE S 86° 42' 58" E, 37.58 FEET TO A POINT; THENCE N 89° 28' 08" E, 190.14 FEET TO A POINT; THENCE N 85° 39' 15" E, 105.06 FEET TO A POINT; THENCE N 44° 28' 02" E, 21.23 FEET TO A POINT; THENCE N 89° 28' 07" E, 106.72 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1 AND THE WEST RIGHT-OF-WAY LINE OF ORANGE AVENUE (80' R/W); THENCE ALONG SAID EAST LOT LINE AND WEST RIGHT-OF-WAY LINE S 00° 33' 31" E, 38.15 FEET TO ITS INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF LIVINGSTON STREET (R/W VARIES); THENCE DEPARTING SAID EAST LOT LINE AND WEST RIGHT-OF-WAY LINE RUN ALONG SAID NORTH RIGHT-OF-WAY LINE S 89° 27' 57" W, 476.71 FEET TO THE POINT OF BEGINNING. (OFFICIAL RECORDS BOOK 4988, PAGE 1270) (LIVINGSTON R/W)

LESS: A PARCEL OF LAND BEING PART OF LOT 1 OF DUPONT CENTRE (A REPLAT) AS RECORDED IN PLAT BOOK 16, PAGES 47 AND 48 PER THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE NORTH LINE OF SAID LOT 1 AND THE SOUTH RIGHT-OF-WAY LINE OF AMELIA STREET (60' R/W) S 89° 41' 13" E, 476.52 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1 AND THE WEST RIGHT-OF-WAY LINE OF ORANGE AVENUE (80' R/W); THENCE DEPARTING SAID NORTH LINE AND SOUTH RIGHT-OF-WAY LINE S00° 33' 31" E, 10.00 FEET ALONG SAID EAST LINE AND WEST RIGHT-OF-WAY LINE TO A POINT; THENCE DEPARTING SAID EAST LINE AND WEST LINE N 89° 41' 13" W, 476.52 FEET TO A POINT ON THE WEST LINE OF SAID LOT 1 AND THE EAST RIGHT-OF-WAY LINE OF THE CSX RAILROAD (R/W VARIES); THENCE ALONG SAID WEST LINE AND EAST RIGHT-OF-WAY LINE N 00° 32' 10" W, 10.00 FEET TO THE POINT OF BEGINNING. (OFFICIAL RECORDS BOOK 4988, PAGE 1278) (WEST AMELIA STREET R/W)

A/K/A

A TRACT OF LAND LYING IN SECTION 26, TOWNSHIP 22 SOUTH, RANGE 29 EAST, BEING A PORTION OF LOT 1, DUPONT CENTRE (A REPLAT) ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 16, PAGES 47 AND 48 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID LOT 1 FOR A POINT OF REFERENCE; THENCE RUN SOUTH 00°04'20" WEST, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 00°04'20" WEST, ALONG SAID EAST LINE, 572.00 FEET TO A POINT ON THE PROPOSED NORTH RIGHT-OF-WAY LINE OF LIVINGSTON STREET; THENCE DEPARTING SAID EAST LINE, RUN NORTH 89°49'51" WEST, 106.61 FEET; THENCE RUN SOUTH 45°02'34" WEST ALONG SAID PROPOSED NORTH RIGHT-OF-WAY LINE, 21.23 FEET; THENCE RUN SOUTH 86°13'47" WEST, ALONG SAID PROPOSED NORTH RIGHT-OF-WAY LINE, 105.06 FEET; THENCE RUN NORTH 89°57'20" WEST ALONG SAID PROPOSED NORTH RIGHT-OF-WAY LINE 190.14 FEET; THENCE DEPARTING SAID PROPOSED NORTH RIGHT-OF-WAY LINE RUN NORTH 00°02'22" EAST, 599.57 FEET TO A POINT ON THE PROPOSED SOUTH RIGHT-OF-WAY LINE OF AMELIA STREET; THENCE RUN SOUTH 89°09'29" EAST, ALONG SAID PROPOSED SOUTH RIGHT-OF-WAY LINE 416.95 FEET TO THE POINT OF BEGINNING.

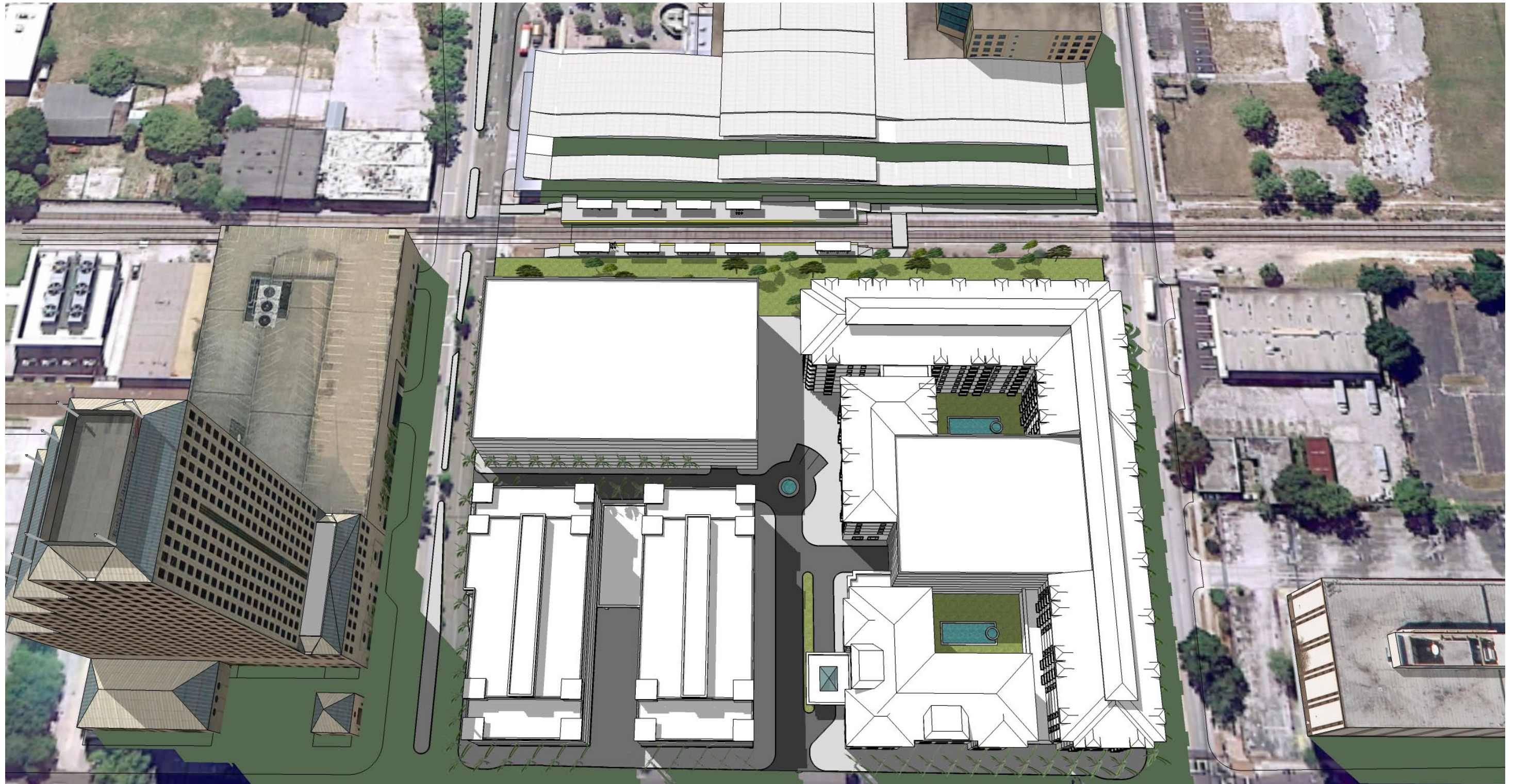
EXHIBIT "B"

A PARCEL OF LAND BEING PART OF LOT 1 OF DUPONT CENTRE (A REPLAT) AS RECORDED IN PLAT BOOK 16, PAGES 47 AND 48 PER THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY AS DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE N 00° 32' 10" W, 18.68 FEET ALONG THE WEST LINE OF SAID LOT 1 AND THE EAST RIGHT-OF-WAY LINE OF THE CSX RAILROAD (R/W VARIES) TO THE POINT OF BEGINNING; THENCE CONTINUE N 00° 32' 10" W, 598.08 FEET ALONG SAID WEST LINE AND EAST LINE TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF AMELIA STREET (70' R(W)); THENCE DEPARTING SAID WEST LOT LINE AND EAST RIGHT-OF-WAY LINE S 89° 41' 13" E, 60.01 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO A POINT; THENCE S 00° 32' 10" E, 599.70 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF LIVINGSTON STREET (R/W VARIES); THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING COURSES AND DISTANCES: N 86° 42' 58" W, 37.58 FEET; THENCE S 89° 28' 13" W, 22.50 FEET TO THE POINT OF BEGINNING.









Action Agenda Item #7.F

To: LYNX Board of Directors

From: Bernard Guida
DIRECTOR OF PROCUREMENT
Rich Bannon
(Technical Contact)

Phone: 407.841.2279 ext: 6057

Item Name: Consideration of Changes to Administrative Rules #1 (Adoption of Administrative Rules and Definitions), #4 (Procurement and Contract Administration) and #6 (Dispute Resolution)

Date: 3/22/2012

ACTION REQUESTED:

The Audit Committee has requested this item to be placed on the Board Agenda for the Governing Board's consideration.

BACKGROUND:

At the January 26, 2012 Audit Committee Meeting Mr. Pat Christiansen, General Counsel, discussed with the Committee the need to modify the Administrative Rules to be consistent with organizational changes made at LYNX. At the March 22, 2012 Audit Committee Meeting Mr. Christiansen reviewed with the Audit Committee the proposed changes to the Administrative Rules #1 (Adoption of Administrative Rules and Definitions, #4 (Procurement and Contract Administration), and #6 (Dispute Resolution). The proposed changes are attached and include:

Administrative Rule #1 (Adoption of Administrative Rules and Definitions)

- Revision to adoption date.
- Added definition of "Director of Procurement".
- Added definition of "Procurement Department"
- Deletion of definition "Procurement/Contracts Manager".
- Deletion of definition of "Purchasing and Contracts Division".
- Renumbering based on changes.

Administrative Rule #4 (Procurement and Contract Administration)

- Revision to adoption date.
Revision to 4.2.2 on the applicability of this administrative rule to all procurements and contracts and the administration of all procurement actions including contracts.
- Revision to 4.2.4 (B) (C) (D) (E) to include clarifications of decision making authority regarding procurement processes.
- Revision to 4.2.5 changing the “Purchasing and Contracts Division” to the “Procurement Department”. Note: this change takes place throughout the document.
- Revision to 4.3.2(G) to broaden “piggybacking” opportunities.
- Revision to 4.3.2(H) (J) to modify blanket purchase orders and micropurchases to under \$3000 consistent with FTA guidelines.
- Revision to 4.3.3 to broaden formal bidding process to include other than just IFB or RFP and to change threshold from \$2500 to \$3000 consistent with FTA guidelines.
- Revision to 4.3.4 (B) to modify the required documentation process for a sole source procurement.
- Revision to 4.3.4 (B) (1) to modify “single” source to “sole” source.
- Revision to 4.4.1 to modify charts detailing approval and execution of contracts.
- Revision to 4.4.2 (B) to modify authorization to execute major contracts in CEO’s absence.
- Revision to 4.4.6 (A) and (B)(G) to modify Governing Board delegation to approve and execute Level 1 bus advertising contracts and other advertising contracts to CEO and to permit CEO to delegate such authority in writing to GM, CAO, or CFO.
- Revision to 4.4.7 (A) to correct a typo.
- Revision to 4.4.10(C) to allow Procurement Director to formally bid for simplified acquisition threshold items at his or her discretion.
- Revision to 4.5.4 to modify delegation to CEO and in writing from CEO to CFO for project contingency authorization of change order(s).
- Revision to 4.6 to add “ or other solicitation method” for competitive bids.
- Revision to 4.6.3(C) to add specification review by the Procurement Department.
- Revision to 4.6.3(E) to modify use of standard legal documents with approval of CEO to add – “who may delegate such authority to the Procurement Director”.
- Revision to 4.6.3(F) to modify and clarify process for consideration of bids.
- Revision to 4.6.4 (A)(B) to modify and clarify process for development of an RFP document.
- Revision to 4.6.4(C)(D) to modify and clarify process for the evaluation of proposals.
- Revision to 4.6.5 to modify and clarify Source Evaluation Committee process.
- Revision to 4.6.6 to modify and clarify the process to award bids.
- Revision to 4.7 to modify and clarify the No contact/”Cone of Silence” process for formal solicitations.
- Revision to 4.11 to change bonding requirement establishment and amount from Governing Board to Procurement Department.
- Revision to 4.12 to modify and clarify geographic preference prohibition consistent with FTA requirements.

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- Revision to 4.13 to modify and clarify contract administration requirements for FTA funded projects.
- Revision to 4.14.2 to add “cone of silence” violation to possible vendor suspension causes.

Administrative Rule #6 (Dispute Resolution)

- Revision to adoption date.
- Revision throughout document from “Contracts Manager” to “Director of Procurement”
- Revision throughout document from “CFO” to “GM” for all appeals processes.

FISCAL IMPACT:

Lynx staff does not anticipate any appreciable fiscal impact from these Administrative Rule revisions.

ADMINISTRATIVE RULE 1
ADOPTION OF ADMINISTRATIVE RULES AND DEFINITIONS

DATE: March 22, 2012 (NOTE: This Rule was amended and re-adopted by the Governing Board at this Meeting).

SCOPE:

This Administrative Rule shall apply to the Authority, its officers, employees, agents and Members of its Governing Board. In addition, this Administrative Rule shall apply to other persons who contractually agree to be bound by its terms (as in the case of vendors who contract with the Authority to provide goods or services).

AUTHORITY:

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

Part II, Chapter 343, Florida Statutes

RULE 1: Adoption of Administrative Rules and Definitions

- 1.1. **Effective Date, Establishment, Application and Construction.** The Administrative Rules shall become effective upon adoption or such other date as may be established by the Governing Board.
 - 1.1.1 **Establishment of Rules.** The Governing Board has established the Administrative Rules, pursuant to its authority under Part II of Chapter 343 of Florida Statutes, to govern the operation of the Public Transportation System and Public Transportation Facilities, and to regulate the affairs and the conduct of the business of the Authority.
 - 1.1.2 **Application and Construction.** The Administrative Rules shall be applied in accordance with Florida law and be construed to not conflict with any ordinance, law, regulation or administrative rule of any local, state or federal government or government agency, applicable under the circumstances of such construction.
 - 1.1.3 **Adoption and Amendment.** The Administrative Rules and any amendments thereto shall be adopted by the vote of a Majority of the Members.
 - 1.1.4 **Binding Effect.** The Governing Board intends that the Administrative Rules constitute the rules of the Authority, with legally binding force and effect upon the Authority, its officers, employees, agents, and Members of its Governing Board.

- 1.2. **Definitions.** Except as otherwise expressly stated in the Administrative Rules, the following terms shall have the following meanings for the purposes of these Administrative Rules:
- 1.2.1 “**Act**” means Part II of Chapter 343 of Florida Statutes, as amended from time to time, and any successor provision thereto.
- 1.2.2 “**Administrative Rules**” or “**Rules**” means the Administrative Rules of the Authority, as adopted and as may be amended from time to time pursuant to Part II, Chapter 343, Florida Statutes.
- 1.2.3 “**Assets**” shall have the meaning set forth in **Section 4.16** of Administrative Rule 4.
- 1.2.4 “**Authority**” means the Central Florida Regional Transportation Authority, created and established pursuant to the Act.
- 1.2.5 “**Advertising Contract**” shall mean a Contract pursuant to which the Authority provides to a third party advertising on one or more properties of the Authority, in exchange for which there is paid or provided to the Authority money or other goods or benefits. The term “**Advertising Contract**” includes “**Bus Advertising Contracts**.”
- 1.2.6 “**Bid**” means a formal written price offer by a Vendor to the Authority to furnish goods or services in response to an Invitation for Bid.
- 1.2.7 “**Bidder**” means a Vendor who has submitted a Bid to the Authority.
- 1.2.8 “**Blanket Purchase Order**” means an open Purchase Order under which a Vendor agrees to provide goods or services to the Authority on a demand basis, pursuant to a Contract that has been awarded and entered into by the Authority in accordance with the Administrative Rules. Thus, the Blanket Purchase Order may not be specific but must be limited as to the aggregate dollar amount which can be ordered under said Blanket Purchase Order.
- 1.2.9 “**Bus Advertising Contract**” shall mean a Contract pursuant to which the Authority provides to a third party advertising on one or more buses of the Authority, in exchange for which there is paid or provided to the Authority money or other goods or benefits.
- 1.2.10 “**Bus Trade**” shall mean a transaction involving a Bus Advertising Contract pursuant to which the Authority provides to a third party advertising on one or more of its buses in exchange, in whole or in part, for a payment not in cash, but in kind. The payment in kind can take the form of any non-cash consideration such as services, labor, materials, advertising, etc.

- 1.2.11 “**Bylaws**” means the rules set forth in Administrative Rule 2, adopted by the Governing Board to regulate the affairs and the conduct of business of the Authority.
- 1.2.12 “**Change Order**” means a modification to an existing Contract. For such Change Order to be valid, it must be in writing signed by the parties to that Contract to be bound, and must be approved by the appropriate process under this Rule.
- 1.2.13 “**Chief Administrative Officer**” or “**CAO**” means the officer responsible for the administrative management of the Authority.
- 1.2.14 “**Chief Executive Officer**” or “**CEO**” or means the highest administrative official and chief executive officer of the Authority.
- 1.2.15 “**Chief Financial Officer**” or “**CFO**” means the officer responsible for the financial management of the Authority, and is designated as such.
- 1.2.16 “**Chief Of Staff**” means the officer responsible for coordinating the activities of the Senior Staff and the Executive Staff of the Authority, and is designated as such.
- 1.2.17 “**Chief Operating Officer**” or “**COO**” means the officer responsible for the general operations of the Authority, and is designated as such.
- 1.2.18 “**Commuter Railroad**” shall have the meaning set forth in the Act.
- 1.2.19 “**Consultants Competitive Negotiation Act**” shall have the meaning set forth in **Section 4.6.6** of Administrative Rule 4.
- 1.2.20 “**Contract**” or “**Agreement**” means any agreement relating to the purchase or sale of goods, supplies, services, or other matters to or by the Authority, and includes, without limitation, contracts for a fixed price, cost, cost plus a fixed fee, incentive contracts, contracts providing for the issuance of job or task orders and leases, letter contracts. It also includes by way of example Purchase Orders and Change Orders with respect to any of the foregoing.
- 1.2.21 “**Contractor**” means any Vendor having a Contract with the Authority.
- 1.2.22 “**Debarment**” means a disqualification of a Vendor to receive and participate in Invitations to Bid or Requests for Proposals or the award of Contracts by the Authority for a specified period of time pursuant to **Section 4.14.3** of Administrative Rule 4.
- 1.2.23 “**Direct Pay**” means a check request submitted to the Finance Department of the Authority for purchases of items described in **Section 4.3.2(C)** of Administrative Rule 4, and items below the dollar threshold identified in the Finance Policy and Procedure.

- 1.2.24 “**Director of Procurement**” means any person designated as the Director of Procurement by the Chief Executive Officer. The Director of Procurement shall be in charge of the Procurement Department and shall be authorized to enter into, execute, and administer Contracts on behalf of the Authority within the authority granted the Director of Procurement under the Administrative Rules.
- 1.2.25 “**Disadvantaged Business Enterprise**” or “**DBE**” means a Vendor for which the gross revenues or number of employees averaged over the past years, inclusive of affiliates as defined by 13 C.F.R.121.103, (i) does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and for which the personal net worth of each owner (excluding primary residence and interest in Business) does not exceed the amount set forth from time to time in said Act, (ii) does not exceed the amount set forth from time to time in said Act for the average annual receipts over the firm’s previous three (3) fiscal years and (iii) meets all criteria established in 49 C.F.R. Part 26 Sub Part D Certification Standards, as amended or supplemented, or any successor provision.
- 1.2.26 “**Emergency**” shall be the existence of a condition or conditions which, in the context of the public service provided by the Authority, would affect or could reasonably be expected to either (i) affect the public health and safety, or (ii) have an immediate, adverse and material effect on the Authority, its business, operations or property, as reasonably determined by any member of the Governing Board, the Chief Executive Officer, or in the absence of the Chief Executive Officer, any other Senior Officer, as further defined in **Section 4.4.7** of Administrative Rule 4.
- 1.2.27 “**Executive Officer**” means Department Chief, Deputy Department Chief, and any other officer serving in a position designated by the Governing Board as an Executive Officer position, each to be appointed to such position by the Chief Executive Officer, pursuant to the Administrative Rules.
- 1.2.28 “**FDOT**” shall mean the Florida Department of Transportation.
- 1.2.29 “**FTA**” shall mean the U.S. Department of Transportation Federal Transit Administration.
- 1.2.30 “**Finance Policy and Procedure**” means the policy and procedure established from time to time by the Finance Department of the Authority.
- 1.2.31 “**Financially Exigent Agreement**” means an agreement entered into or renewed in accordance with **Section 4.4.13** of Administrative Rule 4.
- 1.2.32 “**Financially Exigent Situation**” means a situation whereby a grant or other funding device to or for the benefit of the Authority will terminate or whereby the Authority will otherwise suffer a financial loss or opportunistic loss.

- 1.2.33 “**Fiscal Year**” means October 1 through September 30.
- 1.2.34 “**Fuel Contract**” means a Contract pursuant to which the Authority purchases fuel for its ongoing operations.
- 1.2.35 “**General Provisions Documents**” has the meaning set forth in **Section 4.10** of Administrative Rule 4.
- 1.2.36 “**General Manager**” or “**GM**” means the general manager of the Authority, as appointed by the Board of Directors and who will be responsible for assisting the CEO in the oversight of the daily activities of the Authority.
- 1.2.37 “**Governing Board**” or “**Board**” means the governing body of the Authority created and established, and vested with the legal authority to govern and manage the Authority, pursuant to the Act.
- 1.2.38 “**Gratuity**” means any gift, favor, reward, loan, meal, or other item(s) of monetary value tendered to a Member, officer or employee by any source other than the Authority.
- 1.2.39 “**Invitation for Bid**” or “**IFB**” means a solicitation by the Authority for a Procurement and shall include all documents attached or incorporated by reference utilized within such solicitation.
- 1.2.40 “**Major Contract**” shall mean any Contract other than a Minor Contract. Specifically, by way of illustration, a Major Contract includes any Contract which has a value in excess of \$150,000.00 or which has a term, including options, of more than 5 years, or is not in the approved budget for the Authority. For determining the value of the Contract, the value of all Options provided for in the Contract shall be considered and included at the time the Contract is proposed to be entered into with the Authority.
- 1.2.41 “**Material Interest**” means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of any business entity.
- 1.2.42 “**Member**” or “**Members**” mean the individual, or any two or more thereof, appointed to and serving on the Governing Board pursuant to the Act.
- 1.2.43 “**Minor Contract**” shall mean a Contract which (i) has a value of \$150,000.00 or less, (ii) is in the approved budget for the Authority, and (iii) has a term, including options, of not more than five (5) years. In determining value, the value of all Options provided for in the Contract shall be considered and included at the time the Contract is proposed to be entered into with the Authority.
- 1.2.44 “**Micropurchase(s)**” means a Simplified Acquisition Procurement that is for \$2,500.00 or less. The foregoing amount of \$2,500.00 is the amount

set forth in applicable Federal guidelines for procurements by the Federal government and the foregoing amount shall be adjusted from time to time, without any further action by the Governing Board, to equal the amount set forth from time to time under said Federal guidelines.

- 1.2.45 “**Option(s)**” means in the context of any Contract, the right or option of the Authority to extend the term of that Contract for an additional period as provided for in the Contract.
- 1.2.46 “**Person**” means an individual, partnership, corporation, limited liability company, association, joint stock company, trust, firm, joint venture, or unincorporated organization.
- 1.2.47 “**Personal Property**” shall have the meaning set forth in **Section 4.16** of Administrative Rule 4.
- 1.2.48 “**Piggybacking**” or “**Piggyback Contract**” shall have the meaning set forth in **Section 4.3.2(G)** of Administrative Rule 4.
- 1.2.49 “**Policies and/or Procedures**” shall mean policies and/or procedures established and/or approved by the Chief Executive Officer which are primarily administrative in nature and intended to establish policies and procedures regarding the internal operations of the Authority, as provided in **Section 2.6** of Administrative Rule 2.
- 1.2.50 “**Post**” means to display a recommendation of award of a Contract on the Authority website (or any other website; provided that the Authority’s website contains a hyperlink to such other website) or on a bulletin board designated for such postings located in the Authority facility, or to provide to a Bidder or Proposer actual notice of a recommendation of award of a Contract. The terms “**Post**” and “**Posting**” shall have correlative meanings. The Posting will occur upon said display on the Authority web site or bulletin board or when the Bidder or Proposal receives said actual notice or is actually aware of the recommendation by the Authority or, if applicable, the committee making said recommendation.
- 1.2.51 “**Procurement Department**” means the applicable department of the Authority responsible for the administration of Procurements and the Procurement process and Contracts on behalf of the Authority.
- 1.2.52 “**Procurement(s)**” means the buying, purchasing, renting, leasing or otherwise obtaining of any supplies, services, construction or any other item(s). It also includes all functions that pertain to the obtaining of any supplies, services, construction or any other item(s), including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.
- 1.2.53 “**Project Contingency**” means the amount set forth as the amount of the contingency in any Contract, plus (i) any savings derived as a result of the

direct purchase of materials by the Authority, and (ii) any savings derived as a result of costs transferred from other line items within the project budget.

- 1.2.54 “**Proposal**” or “**Response**” means a document submitted by and executed by a Vendor to the Authority in response to a Request for Proposal or Request for Information, which if accepted by the Authority would represent a binding obligation to the Vendor.
- 1.2.55 “**Proposer**” means a Vendor who has submitted a Proposal to the Authority.
- 1.2.56 “**Public Transportation**,” “**Public Transportation Facilities**” and “**Public Transportation System**” each shall have the meaning set forth in the Act.
- 1.2.57 “**Purchase Order**” means the Authority’s document used to authorize a purchase transaction with a Vendor.
- 1.2.58 “**Purchasing Card Program**” shall mean the Micropurchase procedure or program undertaken by the Authority to process low dollar purchases of services and goods which utilize a purchasing card, as provided and set forth in **Section 4.7** of Administrative Rule 4.
- 1.2.59 “**Relative**” means any individual defined as a relative under Section 112.312, Florida Statutes, or its successor provision.
- 1.2.60 “**Request for Information**” or “**RFI**” means a solicitation for response from interested and prospective Vendors to provide information to determine specifications, qualifications and/or capabilities to satisfy a need of the Authority, and in which the successful Vendor may be given latitude in order to develop a product and/or service, which will fulfill said need.
- 1.2.61 “**Request for Proposal**” or “**RFP**” means a solicitation for Proposals to provide goods and/or services to the Authority, which is awarded by selection criteria to be established at the discretion of the Authority.
- 1.2.62 “**Request for Quotation**” or “**RFQ**” means an informal request either oral or written for a price Proposal from interested or prospective Vendors for specific goods and/or services.
- 1.2.63 “**Requisition**” or “**Work Order Form**” means an internal document generated by the Authority’s originating department and forwarded to the Purchasing and Contracts Division for the Division to initiate a Procurement process for goods or services.
- 1.2.64 “**Responsible**,” when used in the context of a Bidder or Proposer, means a Person who has, in the sole discretion of the Authority or, if applicable,

the Source Evaluation Committee or Procurement/Contracts Manager, the capability to perform the Contract requirements, and the tenacity, perseverance, experience, integrity, ability, reliability, capacity, facilities, equipment, financial resources and credit, which will assure good faith performance.

- 1.2.65 “**Responsive**” when used in the context of a Bidder or Proposer means a Person who has submitted a completed Bid or Proposal and complied with the requirements of the specific Procurement, as determined by the Authority in its discretion.
- 1.2.66 “**Revenue Contract**” means a Contract for which the Authority shall receive compensation or benefit (e.g., monetary, in trade or exchange, or otherwise) and includes, for example, a Bus Advertising Contract.
- 1.2.67 “**Senior Officer**” shall mean the General Manager, Chief Administrative Officer, Chief Financial Officer, Chief Operating Officer, and Chief of Staff, and such other officers of the Authority as may be designated from time to time by the Governing Board. When the context applies, the term “**Senior Officer**” shall also include the Chief Executive Officer.
- 1.2.68 “**Senior Staff**” shall mean all the Senior Officers of the Authority (which includes the CEO).
- 1.2.69 “**Short-Term Bus Service Agreement**” means an agreement entered into in accordance with **Section 4.4.12** of Administrative Rule 4.
- 1.2.70 “**Simplified Acquisition Procurement**” means the Procurement process that is for \$50,000.00 or less, that meets the requirements set forth in **Subsection 4.4.10** of Administrative Rule 4. The Simplified Acquisition Procurement may be further subdivided into other parts such as, for example, Micropurchase program or the Purchasing Card Program.
- 1.2.71 “**Sole Source Procurement**” shall mean a Procurement that is obtained by the Authority without competitive bidding and through a single or sole source which meets the requirements of **Section 4.3.4** of Administrative Rule 4.
- 1.2.72 “**Source Evaluation Committee**” or “**SEC**” means a committee established by the Purchasing and Contracts Division to evaluate Bids and/or Proposals and to make recommendations as to whether and to whom a Contract should be awarded based upon such Bids and/or Proposals.
- 1.2.73 “**Statement of Responsibility**” shall have the meaning set forth in **Section 4.4.5** of Administrative Rule 4.
- 1.2.74 “**Suspension**” means the disqualification of a Person to participate in any Procurement or the award of a Contract by the Authority for a period

determined by the Authority, not to exceed three (3) years pursuant to the Administrative Rule.

- 1.2.75 “**Trade**” shall mean a transaction involving an Advertising Contract pursuant to which the Authority provides to a third party advertising on one or more of its properties in exchange, in whole or in part, for a payment not in cash, but in kind. The payment in kind can take the form of any non-cash consideration such as services, labor, materials, advertising, etc.
- 1.2.76 “**Vendor**” means an actual or potential supplier of a good and/or service to the Authority.
- 1.2.77 “**Vendor List**” means the compilation by the Authority by category of goods and/or services of the names and addresses of those appropriate suppliers of goods and/or services that have indicated an interest in doing business with the Authority.

I hereby certify that the foregoing Administrative Rule 1 was adopted by the Governing Board of the Authority at its duly called meeting on March 22, 2012.

Deborah Henderson, Assistant Secretary

**ADMINISTRATIVE RULE 4
PROCUREMENT AND CONTRACT ADMINISTRATION**

DATE: March 22, 2012

SCOPE:

This Administrative Rule applies to the process by which the Authority contracts for labor, services, goods, and materials for its business, both in the normal and ordinary course of business and in emergency situations. It establishes the process and procedure to be followed by the Authority, the Governing Board, and Authority Staff in regard to said matters.

AUTHORITY:

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

Part II, Chapter 343, Florida Statutes

RULE 4: Procurement and Contract Administration

4.1. **Definitions.** Capitalized terms not otherwise defined herein shall have the meanings provided for such terms as set forth in Administrative Rule 1.

4.2. **General Provisions.**

4.2.1 **Establishment, Scope, and Purpose.** The Governing Board has established this Administrative Rule governing Procurement and Contract administration. The purpose of this Administrative Rule is to place the Authority's contracting function under a centralized system, enabling the Authority to (i) establish policies governing all Procurements and Contracts, (ii) provide for fair and equitable opportunity for all persons doing business with the Authority, and (iii) provide safeguards for maintaining a structured procurement system of quality and integrity.

4.2.2 **Applicability.** This Administrative Rule shall apply to all Procurements and Contracts by the Authority and the administration of all procurement actions including Contracts by the Authority.

4.2.3 **Federal and State Applicability.** The Authority receives Federal and State funds. Therefore, Procurements must be conducted in accordance with all Federal and state regulations that apply to the particular Procurement. The Authority (either through its Governing Board or its Chief Executive Officer) may modify Authority procedures including provisions of this Administrative Rule in order to comply with procedures for state or Federally funded grant programs. Any modification by the Chief Executive Officer shall be noticed to the Governing Board as an information item at the next scheduled meeting if said modification is material. The Governing Board may waive any or all regulations, including,

without limitation, this Administrative Rule, in order to comply with a Federal or state law.

4.2.4 **Discretion/Waiver Right of Authority**. This Administrative Rule 4 is solely for the benefit of the Authority, and establishes the guidelines by the Governing Board by which the Authority Staff is to undertake the procurement functions of the Authority. By adopting this Administrative Rule 4, the Governing Board does not intend to grant to third persons any legal rights in the overall process, as the process is to enable the Authority, in its discretion, to obtain for the benefit of the Authority the best contracts as determined by the Authority in its discretion. Thus, the Governing Board (without limitation) and the Authority Staff as set forth in this Rule, will have the discretion as to who is to be awarded a Contract and on what terms and conditions. With this background and not by way of limitation:

- A. As this Administrative Rule has been adopted by the Governing Board, any determination to be made under this Administrative Rule (including who is to be awarded a Contract with the Authority) may be made by the Authority (meaning the Governing Board) in its absolute discretion. In that regard, the Authority will, as set forth above, have ultimate and final authority as to all matters and may waive or modify all issues in regard to any procurement, whether procedural, material or otherwise. As such, the award of any contract by the Governing Board will be final and will be not subject to any appeal.
- B. The CEO or the Director of Procurement may also make determinations regarding the procurement process in its or his/her discretion but only as to procedural and non-material items (any material or substantive changes will need to be made by the Governing Board). In addition, the Authority (through the CEO or the Director of Procurement with respect to any procedural or non-material items) shall have the right in its discretion to modify or waive any of these Rules or the terms of any RFP or similar request with respect to any particular Procurement or in regard to any proposal/ability to award and approve Contracts. This Section is intended to vest in the Authority, the CEO, or the Director of Procurement as broad discretion as possible for the benefit of the Authority in this process.
- C. In regard to determinations made by the Director of Procurement, his/her determination to waive any procedural matters is included in said discretion and, further, as to a non-material item, that is also within the discretion of that person. With respect to any issue as to whether an item is procedural or non-material, the decision if required by the Chief Executive Officer shall be final and determinative, absent a clear abuse of discretion. However, in any event, the Governing Board as set forth under paragraph A above can make any such decision.

- D. The preliminary recommendation or ranking as to any award of a Contract, whether by the SEC, the CEO, or the Director of Procurement shall not vest in that person any legal right unless and until a final Contract has been fully executed between that person and the Authority. As such, until such time as such a Contract has been executed, the Authority (including the awarding person such as the Director of Procurement) may, in its absolute discretion, refuse to enter into a Contract, may reject the recommendation of the ranking party, may terminate the RFP or other process, and may elect to award the Contract to other persons submitting a proposal. By way of illustration and not limitation, any ranking which may be furnished to the Governing Board in any procurement is only a recommendation to the Governing Board, and the Governing Board, in its absolute discretion may elect to award the Contract to any person.
- E. In regard to the procurement process, the CEO or the Director of Procurement, as set forth above, may waive any defect in any proposal at any time.
- F. In the event any person submitting a proposal to the Authority should file a Protest under Administrative Rule 6, nothing contained in this Administrative Rule 4 (or in Administrative Rule 6) shall further grant any legal right to a protesting party to assert that any Contract should be awarded to that particular party due to any provisions of Administrative Rule 4 or any right as to the process by which the Authority will resolve any such Protest. Any such Protest is for the benefit of the Authority which is to be determined by the Authority in its discretion in order for the Authority to determine who in the best interest of the Authority should enter into a Contract.

4.2.5 **Procurement Department.** The Procurement Department shall administer and facilitate the Procurement process.

4.2.6 **Approval of Awards/Delegation of Authority.** Except as expressly provided herein, all approvals and awards of Procurements, whether by Request for Quotation, Invitation for Bid, Request for Proposals, work order or any other method authorized hereunder, and whether by Contract or any other method, shall require the approval of the Governing Board, or through delegated authority as set forth in this Administrative Rule.

4.3. **Requirement For/Exclusions From Competitive Bidding.**

4.3.1 **General Requirement for Competitive Bidding.** Except as otherwise provided below or elsewhere in these Administrative Rules, all Procurements will generally be sought through competitive bidding.

4.3.2 **Exclusions From Competitive Bidding.** Certain transactions cannot be handled through competitive bidding. The following transactions shall not be subject to a

requirement for competitive bidding but will still be required to be approved by the Governing Board or through delegated authority as set forth in these Administrative Rules:

- A. Agreements between the Authority and governmental entities (i.e. interlocal agreements).
- B. Agreements between the Authority and non-profit organizations (i.e. interlocal agreements).
- C. Procurement of Direct Pay items in accordance with and subject to governing or applicable limits or Federal laws for the following: dues and memberships in trade or professional organizations, subscriptions for periodicals deemed necessary but ancillary for delivering of transportation services, advertisements, postage, expert witnesses, abstracts of titles for real property, closing costs and processing fees for acquisitions, title insurance for real property, deeds, judgments, debt service, mortgagee(s), collective bargaining agreements, salaries, taxes, auto allowance, borrowing of money, pensions, bonds, certificates of insurance, employee service performance awards, water, sewer, and electrical utility services, copyrighted books deemed necessary but ancillary for delivering of transportation services, videos deemed necessary but ancillary for delivering of transportation services, fees, costs of job-related seminars, training, catering service, and fees, licenses, permits, approved travel expenses for the Authority, and non-recurring charges deemed necessary but ancillary for delivering of transportation services.
- D. The lease or purchase of real property, such as land, easements, rights-of-way, existing buildings, structures, or improvements.
- E. Goods and/or services given to, or accepted by the Authority via gift, grant or bequest.
- F. Goods purchased with petty cash, not to exceed \$150.00.
- G. Purchases of goods and/or services through joint utilization of existing governmental competitive contracts available to the Authority pursuant to State or Federal law, commonly referred to as “**Piggyback Contracts.**” Piggyback Contracts may also include the piggybacking under contracts entered into with any governmental jurisdiction such as Schedules (i.e. GSA Schedule 70, State of Florida) Purchasing Cooperatives, etc. consistent with any applicable funding requirements.
- H. Blanket Purchase Orders under \$3,000.00 per fiscal year.
- I. Items purchased for resale to the general public.
- J. Micropurchases under \$3,000.00 per fiscal year.

- K. Contracts for obtaining of labor for the Authority through the collective bargaining process.
- L. Emergency purchases.
- M. Sole Source Procurements.
- N. Bus Advertising Contracts.
- O. Revenue Contracts.
- P. Short-Term Bus Service Agreements.
- Q. Financially Exigent Agreements.
- R. Other methods of Procurement as determined by the Governing Board from time to time.

4.3.3 **Bidding Process for Procurements.** Subject to the further provisions of Section 4.3.2, and unless otherwise provided in these Administrative Rules, the following dollar amounts will determine the process to be followed by the Authority in regard to a particular Procurement:

<u>Contract Amount</u>	<u>Process to be Followed</u>
Above \$50,000.00	A formal competitive bidding process is required such as but not limited to an IFB or an RFP.
\$50,000.00 or less, but above \$3,000.00	Generally a Request for Quotation which would require two or more quotes which could be done by phone, email, etc.
\$3,000.00 or less	Does not require formal competitive process but does require that purchases generally be distributed among vendors and that the price be fair and reasonable in the opinion of the Authority.

The provisions of this Section shall not be applicable to any Procurement under Section 4.3.2 or as otherwise determined by the Governing Board.

4.3.4 **Sole Source Procurements.**

- A. A determination of sole source may be made by the Chief Executive Officer after conducting a good faith review of available sources, which demonstrates there is only one viable source for the required supply, service, or item. A record of determination of the sole source shall be maintained by the Director of Procurement. Any such sole source

Procurement shall conform to the requirements of FTA and applicable State or Federal law.

- B. For a commodity or service to be deemed as a sole source Procurement, the Procurement Department must have the appropriate written documentation approved by the Director of the requesting Department proving at least one of the following:
1. The item is available only from a sole source;
 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 3. FTA authorizes noncompetitive negotiations;
 4. After solicitation of a number of sources, competition is deemed inadequate; or
 5. The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The Authority must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.
- C. The procedure for acquiring a sole source procurement shall not waive the approval/execution requirements otherwise set forth in these Administrative Rules. Thus, for example, a Major Contract, if found to be a sole source procurement, must still be approved by the Governing Board.
- D. Any sole source procurement shall be reported to the Governing Board at its next meeting as an information item.

4.4. **Contract Authority – Who May Approve and Execute Contracts.**

- 4.4.1 The following chart typically sets forth the approval required for a particular Contract, and is subject to the more specific provisions of the applicable Rule:

[Chart begins on following page.]

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
1	<p>Major Contract</p> <p>NOTE: Generally speaking, every Contract is a Major Contract requiring approval by the Governing Board, unless otherwise provided in these Administrative Rules.</p>	Governing Board	4.4.2	No. The Governing Board does, however, have the authority when it approves the Contract to delegate authority.	<p>The Chairman as well as the CEO or, in the CEO's absence, the GM. The Governing Board in approving the Contract, can further delegate or restrict authority as to who can execute the Contract.</p> <p>NOTE: Thus, once the Governing Board has approved the Contract, it can be executed by the Chairman or CEO or, in the CEO's absence, the GM, provided the actual Contract does not vary in any material adverse way from what was approved by the Governing Board. Otherwise, the Contract would need to go back to the Governing Board for re-approval.</p> <p>NOTE: In addition, once the Governing Board has approved a Contract, the CEO is authorized to take whatever action may be appropriate or necessary to fulfill said approval by the Governing Board regarding said Contract, <u>provided,</u> <u>however,</u> if such action either</p>

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
					(i) varies materially from the approval, or (ii) is materially adverse to the Authority, then further approval by the Governing Board is required.
2	Options for Major Contracts NOTE: Any approval of an option under this provision shall be noticed to the Governing Board as an information item at the next scheduled meeting of the Governing Board. NOTE: Any Option not falling within this category requires approval by the Governing Board. NOTE: Thus, if the Governing Board does not specifically authorize staff to exercise options, options must come back to the Governing Board for approval.	CEO, provided: a) such option was contained in the original approved Contract and clearly described in the printed agenda of the Governing Board for that meeting; and b) Governing Board in the original approval authorized the renewal of the option by the CEO without the need for further Governing Board approval	4.4.3	The Governing Board can delegate the authority to approve any Option. CEO cannot delegate his/her authority to approve the exercise of any Option.	CEO or in the absence of the CEO, any other Senior Officer, provided the CEO has approved the exercise of the Option.

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
3	<p>Minor Contract</p> <p>NOTE: In considering the amount of the Contract, the value of all options is included.</p> <p>Any Minor Contract of \$25,000 or more in any one fiscal year shall be noticed to the Governing Board as an information item at the next scheduled meeting of the Governing Board.</p>	CEO	4.4.4 4.4.5	<p>Yes. CEO can delegate authority by written authorization to approve said Minor Contract to:</p> <p>a) GM, CAO or CFO if Contract has a value of \$150,000 or less. b) any Senior Officer and the Director of Procurement if Contract has a value of \$50,000 or less. c) Procurements/ Contracts Manager if Contract has a value of \$25,000 or less. d) Procurement Department Contract Administrators or Buyers if Contract has a value of \$5,000 or less. e) Individual Authority Employees for micro-purchasers if Contract has a value of \$3,000 or less.</p>	The same party to whom authority has been delegated can execute the Contract.
4.	<p>Bus Advertising Contracts</p> <p>a) Level 1 Contracts – Contract does not exceed \$180,000 in the aggregate and the term does not exceed 12 months.</p> <p>b) Level 2 Contracts – Contract exceeds \$180,000 but is less than \$300,000, or it has a term greater than 12 months.</p> <p>c) Level 3 Contracts – all other Bus Advertising Contracts.</p>	<p>a) GM, CEO or CFO.</p> <p>b) CEO provided that the Contract receives prior approval by the Authority’s general counsel.</p> <p>c) Must be approved by the Governing Board and reviewed by Authority’s general counsel</p>	4.4.6	<p>a) If the Contract is less than \$150,000, then the CEO can further delegate under 3 above</p> <p>b) No.</p> <p>c) No.</p>	<p>a) GM, CFO or CEO</p> <p>b) CEO</p> <p>c) As determined by Governing Board in its approval. See 1 above as this would be a Major</p>

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
	<p>NOTE: A summary of new Bus Advertising Contracts shall be provided as information items to the Governing Board at its next meeting.</p> <p>If the Bus Advertising Contract involves a Bus Trade, then that Bus Trade must be approved by CEO.</p>				Contract.
5	<p>Emergency Purchases</p> <p>NOTE: Any such Contracts shall be reported to the Governing Board as soon as practicable (and in any event within ten (10) days after said action has been taken). In addition, the CEO will brief the Governing Board of said action at its next scheduled meeting as a discussion item.</p>	<p>a) CEO, without Governing Board approval, if amount involved is \$150,000 or less.</p> <p>b) If the amount exceeds \$150,000, then the CEO in light of the emergency circumstances shall attempt to contact the Chairman of the Board or, in his/her absence, the Vice-Chairman for approval and oversight; if the Chairman and the Vice-Chairman cannot be contacted or the circumstances are such that the emergency does not allow time to contact the Chairman and the Vice-Chairman, then the CEO will have authority to approve and execute the Contract.</p> <p>c) Authority is also provided to the</p>	4.4.7	<p>a) For amounts of \$150,000 or less, the CEO may delegate with written authorization to any Senior Officer.</p> <p>b) CEO may not delegate amounts in excess of \$150,000; but amounts in excess of \$150,000 can be delegated to any Senior Officer if approved in writing by the Chairman of the Board, or in his/her absence, to the Vice Chairman.</p>	<p>a) CEO or whoever the CEO may delegate.</p> <p>b) In the absence of CEO, any other Senior Officer may execute if approved in writing by Chairman or Vice-Chairman.</p>

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
		Chairman of the Board or, in the absence of the Chairman and the CEO, then the Vice Chairman of the Board. However, in the absence of the CEO, the Chairman of the Board or in his/her absence, the Vice Chairman may delegate authority to execute to any Senior Officer to approve and execute the Contract.			
6	Fuel Purchases	<p>a) Governing Board Approval is required to approve authorized vendors to sell fuel to the Authority. This would be through a competitive bidding process. In said approval, the Governing Board can establish the conditions for the actual purchases of fuel by the CEO or other persons. The approval by the Governing Board of a vendor and a master contract does not of itself delegate authority to actually purchase fuel from that approved vendor. Any such authority must be set forth in either the Governing Board Resolution or in the Administrative Rules.</p> <p>b) In the event the Authority wishes to purchase fuel under an approved contract based on OPIS</p>	4.4.9	<p>a) CEO</p> <p>b) CEO may delegate in writing for purchases under the OPIS contract authority to do so to any other Senior</p>	<p>a) CEO</p> <p>b) CEO, or Senior Officer or Director of Procurement if written delegated authority is given.</p>

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
	<p>NOTE: If at any time during the fiscal year, the Authority staff becomes aware that based upon the rate and price of fuel purchases made year to date, that there is a possibility that the Authority budget for fuel purchases for that fiscal year can be exceeded, then no further fuel purchases can be made until the Governing Board reviews the matter and makes any necessary adjustment to the budget or else further fuel purchases are made with the approval of the Chairman.</p>	<p>pricing or on the spot market, the CEO is authorized to do so but any purchase of fuel beyond a seven-day commitment would require approval of the Chairman.</p> <p>c) The CEO may purchase future contracts under a Contract approved by the Board, provided that the price per gallon does not exceed the price which the Authority's staff has utilized in establishing the Authority's budget for fuel for the period to which the purchase relates.</p>		<p>Officer or the Director of Procurement, within the seven-day limitation.</p> <p>c) No</p>	c) CEO
7.	<p>Short-Term Bus Service Agreement</p> <p>NOTE: Any such agreement shall be reported to the Governing Board at its next scheduled meeting.</p>	<p>CEO if the dollar value of the agreement does not exceed \$500,000.</p> <p>Chairman of the Board if the dollar value of the agreement exceeds \$500,000.</p>	4.4.12	Yes.	CEO or its designee.

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
8.	Financially Exigent Agreement NOTE: Any such agreement shall be reported to the Governing Board at its next scheduled meeting as an information item.	CEO if the agreement or renewal, as applicable, is less than \$150,000. Chairman of the Governing Board if the agreement or renewal, as applicable, is \$150,000 or more.	4.4.13	Yes, by the Chairman of the Governing Board.	CEO or by any Senior Officer if so designated in writing by the Chairman.

The above Chart is specifically subject to the further provisions of each specific rule.

4.4.2 **Major Contracts (Including Contracts Above \$150,000.00)**. Except as otherwise expressly set forth in a resolution by the Governing Board or in these Administrative Rules (e.g. Emergency Purchases), all Major Contracts must be approved by the Governing Board. In that regard:

- A. The Governing Board shall have the authority by resolution to delegate authority to approve Major Contracts on such terms as the Governing Board may determine.
- B. Once approved by the Governing Board, any Major Contract can be executed by the Chairman or the CEO or, in the CEO's absence, the GM, unless otherwise provided in said approval. The Governing Board in approving the Major Contract may also authorize other Authority employees to execute said Contract. If the Contract contains any material adverse change from what the Governing Board approved, the further approval of the Governing Board is needed. Also, with the prior written approval of the CEO, any Senior Officer has authority to take such actions as may be appropriate or necessary to carry out the action by the Governing Board, **provided, however**, if either (i) said action varies materially from the Governing Board approval, or (ii) is materially adverse to the Authority (e.g., a substantial financial increase from that budgeted), then the further approval of the Governing Board would be required.
- C. Generally, every Contract is deemed to be a "**Major Contract**" which requires Governing Board approval, unless otherwise provided in these Administrative Rules or as otherwise provided from time to time in a resolution approved by the Governing Board.
- D. In order to determine whether a Contract exceeds \$150,000.00 and is therefore a "**Major Contract**", the value of all Options is to be included

as if exercised, with such determination being made at the time the Contract is being considered for execution by the Authority.

- E. Approval of the Governing Board is also needed to exercise any Options, unless otherwise provided in Section 4.4.3 below.

4.4.3 **Ability to Approve and Exercise Options For Major Contracts.** Subject to the further provisions of this Section, approval to exercise an Option for a Major Contract, must be further approved by the Governing Board.

- A. Notwithstanding the above, the CEO can approve the exercise of an Option under a Major Contract provided the following two conditions are met:

1. The Option was contained in the original approved Major Contract clearly described in the printed agenda of the Governing Board for that meeting; and
2. The Governing Board authorized the renewal of the Option by the CEO without the need for further Governing Board approval.

- B. Once approved by the CEO, the CEO is authorized to execute the Option. The CEO may also authorize any other Senior Officer to execute the Option, but the CEO must first authorize the exercise of the Option.

- C. Any approval of an Option under this Section shall be noticed to the Governing Board as an information item on the next scheduled meeting of the Governing Board.

- D. With respect to options involving Minor Contracts, those may be approved and executed with the same authority and execution parameters as is the case for a Minor Contract.

4.4.4 **Minor Contracts (Generally Contracts of \$150,000.00 or Less).** Except as may be otherwise expressly set forth in a resolution adopted by the Governing Board, the CEO shall have the authority to approve and execute all Minor Contracts. In that regard:

- A. Any Minor Contract of \$25,000.00 or more in any one fiscal year of the Authority shall be noticed to the Governing Board as an information item at the next scheduled meeting of the Governing Board.

- B. In order to determine whether a contract is \$150,000.00 or less, the value of all Options is to be included as if fully exercised, with such determination being made at the time the Contract is being considered for execution by the Authority.

- C. The CEO shall further have the right to approve and exercise any Options for a Minor Contract.

4.4.5 Delegation by CEO to Further Approve and/or Execute Minor Contracts.

- A. The Chief Executive Officer may in writing delegate his or her authority under Subsection 4.4.4, to approve and/or execute Minor Contracts (including the approval and exercise of Options for Minor Contracts), all on such terms and conditions as the CEO deems appropriate, in the following values or amounts and to the following individuals:

<u>Amount of Contract</u>	<u>Who Can Approve/Execute</u>
\$150,000 or less	GM, CFO and/or CAO
50,000 or less	Any Senior Officer and the Director of Procurement
25,000 or less	Procurement/Contracts Manager
5,000 or less	Contract Administrator/Buyers
3,000 or less	Individual Authority Employees for Micropurchasers

There shall be maintained in the office of the Chief Executive Officer a listing and schedule of any such delegations, including the amount and persons to whom any such authorities have been delegated and the terms of such delegation. Said report shall be furnished to the Governing Board on an annual basis; in addition, the CEO shall further advise the Governing Board of any changes to said delegated authority, when said change occurs, at the next meeting of the Governing Board.

- B. **Scope of Delegations; Responsibility of Officers.** The delegation of authority to approve and award Procurements and Contracts are limited in scope and apply only to those Senior Officers and Authority staff to whom such authority has expressly been delegated herein. No Senior Officer or Authority staff to whom such authority has been delegated hereunder shall have the power or authority to further delegate such authority, or otherwise designate any other individual to carry out the approval and award of Procurements and Contracts authorized hereunder. In the exercise of the authority delegated to them under this Administrative Rule, the Senior Officers shall be subject to the authority and direction of, and fully accountable to, the Chief Executive Officer, who shall be fully accountable to the Governing Board for their actions, in the same manner as if such authority had been delegated to them by the Chief Executive Officer. Each individual to whom such authority has been delegated hereunder in excess of \$15,000.00 shall sign a “**Statement of Responsibility**” and will be held accountable for all actions occurring under their authority and shall be governed at all times by applicable State and Federal laws. Any person authorized to make purchases exceeding in

dollar amount or dollar value of \$15,000.00 shall file a statement of financial interest with the Supervisor of Elections in the jurisdiction within which he or she permanently resides.

- 4.4.6 A. **Bus Advertising Contracts.** Authority to approve and execute Bus Advertising Contracts shall be by the methods and in the maximum amounts specified below:
- A. **Level 1 Contracts.** The Governing Board hereby delegates to the Chief Executive Officer the authority to approve and execute, on behalf of the Governing Board and in accordance with these Administrative Rules and applicable law, Bus Advertising Contracts with (i) a dollar value or dollar amount not to exceed \$180,000.00 in the aggregate, and (ii) a term, including any option to extend or renew, not to exceed twelve (12) months. Legal approval is waived for these Level 1 Bus Advertising Contracts only on the premise that the standard printed form provided by Authority general counsel is used. Any addendum or modification from the standard printed form will require legal review and approval. Level 1 Contracts shall be reviewed after six months by the Authority and/or Authority general counsel. The CEO may delegate such authority in writing to the General Manager, Chief Administration Officer or Chief Financial Officer.
 - B. **Level 2 Contracts.** The Governing Board hereby delegates to the Chief Executive Officer the authority to approve and execute, on behalf of the Governing Board and in accordance with these Administrative Rules and applicable law, Bus Advertising Contracts with a dollar value or dollar amount not to exceed \$300,000.00 in the aggregate, provided that the contracts receive prior approval by Authority general counsel.
 - C. **Level 3 Contracts.** All other bus advertising contracts shall require and be reviewed by Authority general counsel and approved by the Governing Board.
 - D. **Aggregate.** All dollar amounts and terms above are based on dealings with a single customer and shall be considered in the aggregate when classifying within each level. No bus advertising contracts shall be artificially divided so as to fall within Level 1 or Level 2 thresholds.
 - E. **Bus Trades.** In the event the Bus Advertising Contract involves a Bus Trade, then the following provisions will apply:
 - 1. Subject to the further provisions set forth below, all Bus Trades are subject to the same level of approval as is the Bus Advertising Contract. Thus, for example, if the Contract being considered is a Level 3 Contract, then the Governing Board must approve the Bus Trade.

2. Subject to any further delegation by the CEO, the CEO will be required to approve all Bus Trades.
3. The CEO may in writing delegate his/her authority to approve Bus Trades in accordance with the level of approval set forth for the Bus Advertising Contracts.

F. **Notice to Governing Board.**

1. A summary of new Bus Advertising Contracts (not previously furnished to the Governing Board as an information or other item) shall be provided as information items with the Governing Board meeting documents.
2. There shall be presented to the Governing Board on an annual basis an annual report of all the Bus Advertising Contracts then outstanding and entered into during the previous year.

4.4.6 B. **Other Advertising Contracts (Bus Shelters, etc.)** Authority to approve and execute Bus Advertising Contracts shall be by the methods and in the maximum amounts specified below:

- G. **Level 1 Contracts.** The Governing Board hereby delegates to the Chief Executive Officer the authority to approve and execute, on behalf of the Governing Board and in accordance with these Administrative Rules and applicable law, Advertising Contracts with (i) a dollar value or dollar amount not to exceed \$180,000.00 in the aggregate, and (ii) a term, including any option to extend or renew, not to exceed twelve (12) months. Legal approval is waived for these Level 1 Advertising Contracts only on the premise that the standard printed form provided by Authority general counsel is used. Any addendum or modification from the standard printed form will require legal review and approval. Level 1 Contracts shall be reviewed after six months by the Authority and/or Authority general counsel. The CEO may delegate such authority in writing to the General Manager, Chief Administration Officer or Chief Financial Officer.
- H. **Level 2 Contracts.** The Governing Board hereby delegates to the Chief Executive Officer the authority to approve and execute, on behalf of the Governing Board and in accordance with these Administrative Rules and applicable law, Advertising Contracts with a dollar value or dollar amount not to exceed \$300,000.00 in the aggregate, provided that the contracts receive prior approval by Authority general counsel.
- I. **Level 3 Contracts.** All other Advertising Contracts shall require and be reviewed by Authority general counsel and approved by the Governing Board.

J. **Aggregate**. All dollar amounts and terms above are based on dealings with a single customer and shall be considered in the aggregate when classifying within each level. No Advertising Contracts shall be artificially divided so as to fall within Level 1 or Level 2 thresholds.

K. **Trades**. In the event the Advertising Contract involves a Trade, then the following provisions will apply:

1. Subject to the further provisions set forth below, all Trades are subject to the same level of approval as is the Advertising Contract. Thus, for example, if the Contract being considered is a Level 3 Contract, then the Governing Board must approve the Trade.
2. Subject to any further delegation by the CEO, the CEO will be required to approve all Trades.
3. The CEO may in writing delegate his/her authority to approve Trades in accordance with the level of approval set forth for the Advertising Contracts.

L. **Notice to Governing Board**.

1. A summary of new Advertising Contracts (not previously furnished to the Governing Board as an information or other item) shall be provided as information items with the Governing Board meeting documents.
2. There shall be presented to the Governing Board on an annual basis an annual report of all the Advertising Contracts then outstanding and entered into during the previous year.

4.4.6 C **Limitations on Advertising Content**.

1. The purpose of entering into Advertising Contracts is to maximize the total amount of revenue available to the Authority. To this end, the Authority is cognizant that the revenue it earns from Advertising Contracts is based upon the perceived class of the businesses advertising on the Authority's advertising space; if advertisers perceive the Authority's advertising space to be a medium for lower caliber businesses or morally or politically controversial materials, the Authority's advertising rates, and corresponding revenue, would decline.
2. There shall be no political, alcohol, tobacco, gambling, sexually or adult-oriented advertising of any nature whatsoever.

3. There shall be no advertising that is false, misleading, deceptive, contrary to good taste, controversial, or offensive to the moral standards of the community.
4. The initial determination of what constitutes an advertisement which must be rejected pursuant to subsections (2) or (3), above, shall be made by the Chief Executive Officer. The determination of the Chief Executive Officer may be appealed to the Governing Board, by the party seeking to advertise (the “Complaining Party”), upon filing notice within thirty (30) days of receiving the Chief Executive Officer’s initial determination. The determination of the Governing Board shall be final and conclusive. A failure to file notice of appeal within the time set forth above shall constitute a waiver of the Complaining Party’s right to appeal the decision of the Chief Executive Officer.
5. In addition to those advertisements which must be rejected pursuant to subsections (2) and (3), above, the Governing Board retains the discretion to reject any Bus Advertising Contract or specific advertisement whose content could reasonably be perceived to threaten the Authority’s revenue stream.
6. In the event either provision (3), (4), or (5), above, is held to be unconstitutional, such unconstitutionality shall have no effect on provisions (1), (2), or any other provisions contained in this rule.

This Rule applies to all Advertising Contracts, including Bus Advertising Contracts.

4.4.7 **Emergency Procurements.**

- A. The Chief Executive Officer may enter into Emergency Contracts if the amount involved is \$150,000 or less. If the amount exceeds \$150,000, the approval of the Chairman, or in his/her absence the Vice Chairman, will be required. If either the Chairman or the Vice Chairman is not available and the circumstances of the Emergency are such that the CEO reasonably determines that further delay would be materially adverse to the Authority of the public interest, then the CEO will have authority to prove and execute the Emergency Contract, even in excess of \$150,000.
- B. Authority is also provided to the Chairman of the Board or in his/her absence, to the Vice Chairman, to execute Emergency Contracts. Further, in the absence of the CEO, the Chairman or in his/her absence, the Vice Chairman may delegate authority to execute an Emergency Contract to any other Senior Officer to approve and execute an Emergency Contract.
- C. Subject to the rules of the FTA and the State of Florida, as applicable, in case of any Emergency, the Administrative Rules, including any required

competitive bidding, are hereby waived to the extent needed to meet and address the Emergency.

- D. The Senior Staff shall to the extent possible keep the Governing Board, and particularly the Chairman of the Board, if feasible, advised and informed regarding the Emergency, and the efforts undertaken by the Authority to address said emergency.
- E. The authority provided under these Administrative Rules to address any emergency shall apply during the term of the Emergency.
- F. Documentation of any such Emergency shall be maintained, and the Chief Executive Officer shall advise the Governing Board of the Emergency as soon as practicable (and in any event within ten (10) days after said Emergency has arisen as well as the action taken) and will further keep the Chairman and his/her absence, the Vice Chairman, advised of the Emergency on a continuing basis. Further, the CEO will brief the Governing Board of said Emergency at the next meeting of the Governing Board as a discussion item.

4.4.8 **Revenue Contracts.**

- A. Revenue Contracts are generally those contracts which do not involve the acquisition of goods or services by the Authority and do not involve the payment of funds by the Authority. Said Revenue Contracts generally involve contracts whereby the Authority will provide to a third party the right to use property or privileges of the Authority in exchange for the payment of funds or other value to the Authority.
- B. Subject to the further provisions set forth below, all Revenue Contracts shall be deemed to be Major Contracts which require the approval of the Governing Board.
- C. Notwithstanding the foregoing, the Chief Executive Officer may approve Revenue Contracts provided both (i) the value of said Revenue Contract, including options, does not exceed \$150,000.00, and (ii) the term of the Revenue Contract does not exceed 5 years. In considering the approval of any Revenue Contract, the following standards will be applicable:
 - 1. The competitive bidding procedures for the Authority shall apply, if applicable.
 - 2. The Authority shall seek to obtain the highest and best value for the Authority.
- D. Revenue contracts which are not submitted to the Governing Board for their approval shall be noticed at the next meeting of the Governing Board as an information item.

4.4.9 **Fuel Contracts.**

- A. The Governing Board finds that the procurement of fuel by the Authority is both an absolute necessity for the Authority to fulfill and meet its public purpose, and also that the procurement of fuel is subject to the market risks and shifts from time to time, particularly due to price variations. Therefore, the Authority must be prepared in acquiring fuel to be able to adjust to and meet market conditions from time to time.

The Governing Board will from time to time approve Contracts with vendors to supply fuel to the Authority. In regard to said process:

1. The selection of said vendors will generally be by the competitive bidding process.
2. More than one vendor can be selected and different vendors can be selected for different type of fuel purchases. For example, a separate vendor can be selected based on Oil Price Information Service (“**OPIS**”) pricing or spot market pricing, and other vendors can be selected to furnish the Authority fuel based on future contracts (generally meaning the purchase of fuel for delivery thirty (30) days or more in the future). Upon Governing Board approval, the Contracts can be executed by the CEO or other authorized officers as set forth in this Rule. The approval however by the Governing Board of any such Contracts and their execution will not constitute any obligation on the part of the Authority to purchase any fuel thereunder; those Contracts will simply constitute the approval for the Authority, if it chooses, to purchase fuel from the vendors who are party to the Contracts in accordance with the terms therein (including the pricing terms therein).
3. If the Authority has entered into a Contract with a vendor for the purchase of fuel using OPIS or spot price market pricing, the CEO, any other Senior Officer or the Director of Procurement is hereby authorized to purchase fuel under said Contract, provided that the fuel is for the present use of the Authority and it can be used up by the Authority within seven (7) days.
4. If the Authority has entered into a Contract with a vendor for the purchase of future contracts, the CEO shall have the authority to make said purchases provided that the price for fuel so acquired is within the budget approved by the Governing Board for fuel purchases for that particular year. The foregoing sentence will be met if the CEO is of the reasonable opinion that the price per gallon contained in said future contracts, along with other existing and contemplated purchases by the Authority, will not cause the

approved budget amount for fuel purchases to be exceeded for that fiscal year.

- B. The Governing Board will generally on a two-year basis renew the guidelines or process by which the Authority may seek to acquire fuel for the Authority's operations as set forth in Part A above.
- C. If the Governing Board has first approved a Contract for the purchase of fuel, then, as specifically provided in Part A above, the so designated Authority representative may purchase fuel and/or future contracts under that Contract without further authorization from the Governing Board. The amount of fuel and/or future contracts that the Authority may purchase pursuant to the foregoing authority shall not exceed the total amount that the Governing Board has budgeted for fuel for the period to which the purchase relates (taking into account all other purchases of fuel and/or fuel futures contracts for such period).

If at any time the Authority staff reasonably believes that the Authority's budget for fuel purposes could be exceeded by the Authority's fuel requirements for that fiscal year, then, in that event, no further purchases of fuels can be made until either (i) the Governing Board readjusts its budget or addresses the situation, or (ii) the Chairman approves the further purchases.

4.4.10 **Simplified Acquisition Procurements.**

- A. No purchase of goods, consultant services, services and/or construction shall be artificially divided so as to fall within this Simplified Acquisition Procurements exemption.
- B. Simplified Acquisition Procurements include any Procurement with an amount of \$50,000.00 or less.
 - 1. Procurements with an amount of \$3,000.00 (or such other amount as may be modified from time to time in Federal guidelines) or less do not require quotes. However, such Procurements are expected to be well distributed between Vendors.
 - 2. Procurements with an amount greater than \$3,000.00 (or such other amount as may be modified from time to time in Federal guidelines) require a Request for Quotation (RFQ) or other competitive bidding process as authorized herein. Purchases shall be made on the basis of at least two written quotations. The written quote may be emailed, faxed or mailed to Authority. The written quote must clearly identify the Vendor making the quote and the total price being quoted. Summary quotes must be included within the text of the requisition, and the original quote received shall be retained by the department for future reference. Quote prices will

not be released to competing Vendors until final determination for the Procurement has been made.

- C. Simplified Acquisition Procurements may be formally bid at the discretion of the Director of Procurement. If bid, then all applicable terms of this Administrative Rule shall apply.

4.4.11 **Purchasing Card Program**. The Authority hereby establishes a “**Purchasing Card Program**” designed to improve efficiency in processing low dollar purchases of commodities with an aggregate amount not to exceed \$3,000.00 (or such amount as may be provided from time to time in the Federal guidelines) per purchase. This will allow the cardholder to purchase approved commodities and services directly from Vendors within the transaction limits established for each cardholder. Each Procurement card shall be issued to a named individual. The Authority shall be clearly shown on the card as the governmental buyer of goods and services. Subject in all events to the other provisions of these Administrative Rules, the Procurement Department may establish further details of the Purchasing Card Program and/or establish internal controls so that purchasing cards are used only for authorized purposes, and to provide a convenient and adequate small order purchasing system for the Authority’s employees.

4.4.12 **Short-Term Bus Service Agreements**. The Chief Executive Officer or his designee may enter into an agreement to provide bus services to a third party, without first obtaining the approval of the Governing Board, if all of the following four conditions A, B, C and D are met:

- A. The Chief Executive Officer or his designee determines that the agreement must be entered into before the next regularly scheduled meeting of the Governing Board;
- B. In exchange for providing the services, the Authority will receive its standard hourly rate for bus services that it charges to third parties;
- C. The term of the agreement does not exceed six months; and
- D. The dollar value of the agreement does not exceed \$500,000 or if the Chairman of the Governing Board first consents to the entry into the agreement, then, in that case, there shall be no dollar limitation.

The Chief Executive Officer will advise the Governing Board of the agreement or the renewal, as applicable, at the next regularly scheduled meeting of the Governing Board.

4.4.13 **Financially Exigent Agreements**. The Chief Executive Officer may enter into an agreement or renew an existing agreement, notwithstanding the fact that entering into the agreement or renewing the existing agreement would otherwise require the prior approval of the Governing Board, if both of the following conditions A and B are met:

- A. Financially Exigent Situation will be created as a result of waiting for the next regularly scheduled meeting of the Governing Board to approve the agreement or approve the renewal of the existing agreement; and
- B. Either (i) the dollar value of the agreement or the renewal is less than \$150,000 or (ii) if the dollar value of the agreement is \$150,000 or more, then the Chairman of the Governing Board first consents to the entry into the agreement or the renewal of the existing agreement.

The Chief Executive Officer will advise the Governing Board of the agreement or the renewal, as applicable, as soon as practicable (and in any event within ten (10) days after said action has been taken); in addition, the CEO will brief the Governing Board of said action at the next of the Governing Board. In the absence of the CEO, the Chairman of the Governing Board may designate any other Senior Officer to execute any Financially Exigent Agreement.

4.5. **Form of Contracts/Execution/Etc.**

- 4.5.1 **Form Contracts/Changes.** It is the intent of the Authority to the extent possible to use form contracts to facilitate the Procurement process. The Chief Executive Officer and/or Authority's legal counsel to the Authority may approve changes to a base form contract which has been previously approved by the Governing Board provided that (i) such changes, read together, do not cause such contract, instrument or other obligation to be materially different (creating a negative financial impact or increasing liability or obligation of the Authority) from the form approved by the Governing Board, or (ii) the Governing Board expressly authorizes the Chief Executive Officer and/or legal counsel, as the case may be, to approve such changes in the resolution or motion approving the form of the contract.
- 4.5.2 **Execution of Contracts.** Any Contract, instrument or other obligation requiring Governing Board approval, which has been so approved as provided in these Administrative Rules, shall be executed by the person or persons set forth in these Administrative Rules, or, as an alternative, as set forth in any resolution adopted by the Governing Board. No other employee of the Authority has any authority to execute any such contracts.
- 4.5.3 **Contract Amount/Monitoring of Amount.** All Contracts shall indicate on their face the dollar value or dollar amount, if any, which shall not exceed the dollar amount or dollar value, if any, approved by the Governing Board or as specifically provided herein. The Procurement Department will be responsible for ensuring the Contract amount does not exceed such stated value or dollar amount and the scope of service originally approved by the Governing Board.
- 4.5.4 **Project Contingency.** The Governing Board may elect to approve a Project Contingency for certain Procurements or capital improvement projects that may require contingent additional costs. The Chief Executive Officer, or through his or

her written delegation the Chief Financial Officer, shall have the authority to authorize Change Orders for use of a Project Contingency subject to the following requirements:

- A. Change Orders shall not exceed ten percent (10%) of the original Contract amount approved by the Governing Board.
- B. Change Orders shall not exceed \$150,000.00 (for any single change, claim or amendment).
- C. All Change Orders relating to a particular project shall not exceed fifty percent (50%) of the approved Project Contingency (in the aggregate).
- D. Once fifty percent (50%) of the Project Contingency has been utilized, only the Governing Board, may authorize use of the remaining fifty percent (50%) of the Project Contingency, unless the Chief Executive Officer determines that a delay in authorization of the expense will result in substantial delay or additional cost to the Authority, in which case, the CEO may authorize said expense from the Project Contingency, but will so inform the Governing Board at the next meeting as an information item.
- E. Direct Pay purchases shall not constitute Change Orders to the extent that they solely involve changes to line items in the Contract.
- F. The Governing Board may modify or waive the requirements of this Subsection 4.5.4 in the Contract award.
- G. Any Change Order, claim, amendment or expenditure of Project Contingency, as provided herein, shall be noticed to the Governing Board as an information item at the next scheduled meeting of the Governing Board. Any proposed increase in the Project Contingency, for purposes of modifying the authority of the Chief Executive Officer under this Subsection 4.5.4, must be presented for approval to the Governing Board prior to authorization.

4.6. **Process for Competitive Bidding.**

4.6.1 **Invitation for Bid versus Request for Proposal.** The decision as to whether to use an IFB, RFP, or other solicitation method for a particular Procurement shall be made by either the Director of Procurement or the Chief Executive Officer. Any decision made by the Director of Procurement may be overridden by the Chief Executive Officer. The Director of Procurement and/or the Chief Executive Officer shall take the following factors into account in making his or her decision:

- A. Competitive bidding though an Invitation for Bid will be the preferred method for a Procurement when:

1. Precise specifications of the needed product or services are known and can be described in the Invitation for Bid;
 2. Price is the only variable; and
 3. The Director of Procurement and/or the Chief Executive Officer determines that the IFB process best serves the Authority's interests.
- B. A Request for Proposal is appropriate when the exact product or service needed by the Authority is not specifically predetermined. RFPs shall provide a statement of need or service description for achieving a described goal of the Authority, which proposed solutions are sought. RFPs may include specifications, scope of services, and proposed contractual terms and conditions to which a Proposer must respond. RFPs may encourage the Proposal of alternative specifications, scope of services, and proposed contractual terms and conditions if such alternatives are proposed by a Proposer as the best method of meeting the need stated or achieving the described goal of the Authority.

4.6.2 **Authorization to Issue an Invitation for Bid or Request for Proposal.** The Governing Board must approve the issuance and award of all RFPs and IFBs where the dollar value of the goods or services to be obtained thereby is in excess of \$150,000; **provided, however,** that the Chief Executive Officer may approve the issuance (but not award) of any such RFP or IFB absent Board authorization (regardless of dollar value) if either of the following two conditions is met and the Governing Board is notified about the issuance of the RFP or IFB at its next regularly scheduled meeting:

- A. The Procurement to which the RFP or IFB relates is contemplated or set forth in the annual budget approved by the Governing Board; or
- B. The Chairman of the Governing Board has first consented to the issuance of the RFP or IFB.

The Governing Board may impose any additional or different conditions on any bid or proposal process under these Administrative Rules.

4.6.3 **The Bid Process.**

- A. The specific Department Director shall identify the desired item(s) and shall submit a written request to the Director of Procurement. All specifications, budget information, independent cost estimate and relevant information shall be included.
- B. The Procurement Department shall put the Procurement request into the proper form and complete the advertisement and Bid/contractual documents.

- C. The department requesting the item(s) will develop the specifications for review by the Procurement Department.
- D. All bids will be publicly opened at the prescribed date and time and recorded on the bid tabulation form at the time of the bid opening.
- E. When available, standard legal documents developed by the attorneys for the Authority shall be utilized. Standard legal documents or contracts shall not be modified without the approval of the Chief Executive Officer, who may delegate such authority to the Director of Procurement.
- F. The consideration of all bids shall be based on the requirements set forth in the Invitation to Bid as well as the responsiveness and responsibility of the bidder. In all cases, Authority reserves the right to select any bid deemed in the best interest of Authority, or to reject any or all bids.

4.6.4 **The Proposal Process.**

- A. The specific Department Director shall identify the desired Procurement and shall submit a written request to the Director of Procurement. All specifications and/or scope of work, budget information, independent cost estimate and relevant information shall be provided before the solicitation is issued by the Procurement Department.
- B. The Director of Procurement and the requesting department will then jointly develop the evaluation criteria. The evaluation criteria must include price as one element.
- C. The evaluation of all Proposals shall be based on the requirements set forth in the Request for Proposal. Proposals from responsible Proposers will be evaluated and ranked for the purposes of selecting a Proposal for a potential award based on the criteria listed by their relative degree of importance.
- D. The selection of responsive and responsible Proposers “short listed”, or to be awarded a Contract, or to be recommended for award to the Authority Board of Directors, will be based upon the evaluation requirements and process set forth in the Request for Proposal.

4.6.5 Source Evaluation Committee.

Prior to the issuance of an RFP, the Director of Procurement may choose to establish a Source Evaluation Committee (SEC) in order to evaluate Proposals and to make recommendations as to whether and to whom a Contract should be awarded. Subject to any conditions imposed by the Governing Board, the Director of Procurement may appoint such individuals (within or without the Authority) to be a member of a SEC.

- A. The Director of Procurement or his or her designee will assist the members of the SEC in their responsibilities by providing instructions and guidance and obtaining responses to technical issues should they be raised.
- B. The Director of Procurement shall appoint one member of the SEC to be the Chairperson of the Committee.
- C. The Procurement Department will send a “No Conflict of Interest Certification” letter to the SEC members and each member shall return an executed copy to the Procurement Department. The SEC members who have executed the “No Conflict of Interest Certification” will be provided with all of the “responsive” proposals received for the RFP and evaluation forms specific to the member and each Proposal received. It is a condition to being on the SEC that the “No Conflict of Interest Certification” be completed. If a proposed member of the SEC fails to execute such a document, the Director of Procurement may appoint a replacement on the SEC.
- D. The SEC members shall each review the received proposals and each member will independently score each proposal based upon the evaluation criteria defined in the RFP. All proposals shall be scored prior to the SEC meeting.
- E. During the initial evaluation of the Proposals, the members of the SEC shall safe guard the proposals and not discuss any proposals with anyone outside of the Procurement Department.
- F. The Director of Procurement or designee will oversee the SEC meetings, but that person is not a member of the SEC. This person is responsible to ensure the process is conducted in accordance with current policies and procedures.
- G. The Director of Procurement or designee will schedule the SEC meeting. Each Proposer will be notified of the time, date and place of the SEC meetings. These meeting are open to the public in accordance with Florida’s Government in the Sunshine Law and unless otherwise stated by the Director of Procurement, all Proposers and members of the public may attend the meeting and observe the procurement process. Public comments will not be permitted at the SEC meetings as the SEC is carrying out a function that is executive in nature.
- H. The SEC may hold meetings in private in compliance with the Florida's Government in the Sunshine Law.

4.6.6 **Process for Award of Bid.**

- A. The Contract may be awarded to the Responsible and Responsive Bidder who submits the lowest bid price. The Contract shall be awarded by means

of a written notice to such Bidder. The Authority shall reserve the right to reject all Bids or to elect not to proceed.

- B. A Bidder may be determined non-Responsible or non-Responsive for failing to meet the requirements of any IFB, any provision of the Administrative Rules, policies, or procedures of the Authority, or applicable law, which determination shall be made in the sole and exclusive judgment of the Authority. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry may be grounds for a determination that the Bidder is non-Responsible or non-Responsive with respect to a Procurement.
- C. Recommendation Status for Bids:
 - 1. Staff shall recommend award to the responsive and responsible bidder whose bid is determined to be the most advantageous to the Authority. In the event only one responsive and responsible bid is received, the Authority reserves the right to award to the single Bidder after conducting successful negotiations with the bidder, readvertise the Invitation for Bid, or elect not to proceed.
- D. Qualifications/Standards of Bidders:
 - 1. All awards made by the Authority, whether obtained by Invitation for Bid/advertisement, Proposal, or Quotation, or any other method, shall consider whether the prospective Vendor meets the standard of qualification. Factors to be considered in determining whether the standard of qualification has been met shall include whether a prospective contractor/vendor has:
 - a. The appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
 - b. A satisfactory record of performance;
 - c. A satisfactory record of integrity;
 - d. The legal ability to contract with the Authority; and
 - e. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to any licenses, permits, or organization papers required.
 - 2. The prospective Vendor shall supply information requested by the Authority concerning qualifications. If such Vendor fails to timely supply the requested information, the Authority shall base the

determination of qualification upon any available information, or may find the prospective Vendor not qualified if such failure is unreasonable.

- 4.6.7 **Selection.** Procurements, with an amount equal to or in excess of \$50,000.00 shall be competitively bid and awarded based on the submission of sealed Bids or Proposals, except as otherwise expressly provided herein. All Procurements with a dollar value or dollar amount of \$50,000.00 or less may be obtained pursuant to the process for Simplified Acquisition Procurements in Subsection 4.4.10.
- A. Nothing in the foregoing shall prohibit the Authority from renewing Contracts with Contractors originally selected through a competitive selection process or original sole source determination, provided such renewal is within the scope of the original Contract.
 - B. An Invitation for Bid, Request for Proposal or other solicitation may be postponed or cancelled by the Authority at any time in the sole discretion of the Authority.
 - C. With respect to any Invitation for Bid, Request for Proposals or other solicitation the Bid(s)/Proposal(s) or specific Bidder(s)/Proposer(s) determined to be non-Responsible/non-Responsive may be rejected in whole or in part, by the Authority.
 - D. The procedures required herein may be departed from by the Authority in any manner that is reasonable in the event of an emergency, or in order to comply with Federal or State requirements
- 4.6.8 **Procurement of Certain Consultant and Professional Services.** To the extent that the Procurement of certain consultant or professional services is subject to the application of Florida Statutes § 287.055, or any successor provision thereof (the “**Consultants Competitive Negotiation Act**”), such Procurement shall be conducted in accordance with such provisions of such law.
- 4.6.9 **Sales Tax Recovery and Shared Cost Savings.** The Authority may utilize the sales tax recovery system and/or shared cost savings authorized under general law when it procures goods and services for the construction of new or renovated facilities when deemed to be in the best interest of the Authority. Pursuant to such sales tax recovery system, Procurements may be made through the Authority on behalf of its contractors without the use of the competitive procedures provided under this Administrative Rule, to the extent authorized by law.
- 4.6.10 The Governing Board at all times may in its discretion as to any particular bid or contract change or modify the procedures for said matter, notwithstanding that they conflict with these Administrative Rules.

4.7. **Cone of Silence.**

4.7.1 A “Cone of Silence” shall be in effect for each solicitation over \$50,000.00 in value from the date of advertising to the date of award. During this time, contact of any type by any vendor, interested party or representative thereof with any Authority Board of Directors Member, any Authority employee (exclusive of those Authority employees specifically exempted in the solicitation document), or any SEC Member to discuss the solicitation is prohibited.

4.7.2 The Governing Board may impose sanctions upon any vendor, representative thereof or interested party who is found to have violated the provision of this Section 4.7. Vendor(s) found in violation shall be disqualified from further consideration of the solicitation and may be Suspended or Debarred from participating in future solicitation opportunities.

4.8. **Background Checks and Investigations.** Submission by any Vendor of a Bid, Proposal or other response to a solicitation of goods or services constitutes consent by such Vendor to background checks, investigations or other inquiries by the Authority.

4.9. **Specifications.** All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage maximum free and open competition in satisfying the Authority’s need. Prospective suppliers may be required to be pre-qualified for particular types of supplies or services. Solicitation mailing lists of potential contractors shall include, but not be limited to, such pre-qualified suppliers. This Section shall not be read to preclude the Authority from standardization on a name-brand product.

4.9.1 **Brand Name and/or Equal Specifications.** Use of a brand name or equal specification may be restrictive of product competition. Therefore, such use may be limited to instances when the Authority makes a determination that only the identified brand name(s) item(s) and/or equal specifications will satisfy the Authority’s needs or where a Procurement has been standardized pursuant to the Purchasing and Contracts Procedures. When appropriate, to ensure full and open competition the specification should not state only a “**Brand Name**” product without listing its salient characteristics and not allowing “**An Equal**” product to be offered. If only one Vendor can supply the requirement, the Procurement shall be made as a Sole Source in accordance with Subsection 4.3.4.

4.10. **General Provisions Document.** The Procurement Department will establish a “**General Provisions Document**” which will contain certain guidelines of the Authority and statutory and regulatory requirements contained in the FTA Master Agreement and Best Practice Procurement Manual or similar document established by FTA rule or policy. The “**General Provisions Document**” will be referenced in the Authority’s Procurement solicitations. The “**General Provisions Document**” may be made available on the Authority’s website for viewing or in printed form at a minimal copy cost. Vendors that are awarded Contracts shall comply with and be subject to the provisions set forth in the “**General Provisions Document**.”

- 4.11. **Bonding Requirements.** The Procurement Department may require a Bidder or Contractor to furnish bid bonds, performance bonds and/or payment bonds in amounts determined by the Procurement Department.
- 4.12. **Geographic Preferences.** Procurements made subject to FTA requirements will be conducted in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical vendor preferences. Procurements made subject to Florida State Statute, FS-2387.055 (Consultants Competitive Negotiation Act) may include geographic preference professional services included in the Statute, so long as its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 4.13. **Contract Administration.** FTA funded projects shall comply with the FTA Circular 4220.1F, Third Party Contracting Requirements as may be amended, supplemented, updated or replaced from time to time, or any other applicable FTA rule or policy. As a condition of all Contracts pertaining to Procurements made pursuant to this Administrative Rule, all parties thereto shall act in good faith in the performance thereof.
- 4.14. **Suspension, Debarment, Protest, Appeal & Remedies.**
- 4.14.1 **Authority.** The Chief Executive Officer or Governing Board may Suspend or Debar for cause the right of a vendor or principals of a vendor, to be included on a Vendor List and any Bid or Proposal from that Vendor may be rejected, provided that the Governing Board shall have the authority to waive or rescind such Suspension or Debarment. The Suspension or Debarment shall be final and conclusive unless the suspended or debarred Vendor initiates protest proceedings pursuant to this Section within thirty (30) business days after the date of notification.
- 4.14.2 **Suspension.** A Vendor may be suspended for a period not to exceed three (3) years as determined by the Chief Executive Officer or Governing Board based upon the following: default; fraud or misrepresentation; conviction by a court of a criminal offense or any other offense indicating a lack of business integrity; insolvency; violation of the ethical standards imposed under State or Federal law; failure to comply with the DBE participation or DBE requirements as may be established in an awarded Contract; violation of the Cone of Silence during a solicitation process; or any other cause the Chief Executive Officer or Governing Board determines to be sufficiently serious and compelling as to materially and adversely affect responsibility of a Vendor, including but not limited to suspension or debarment by another governmental entity for cause.
- 4.14.3 **Debarment.** A Vendor may be permanently debarred for the following:
- A. Default or failure to fully comply with the conditions, specifications, drawings, time limits, or terms of an Invitation to Bid, Request for Proposals or Contract with the Authority twice in any three-year period.

B. Conviction or judgment in a court for commission of any offense listed in Subsection 4.14.5 in connection with the Vendor's commercial enterprise. If the conviction or judgment is reversed through the appellate process, the Debarment shall be removed immediately upon written notification and proof of final court disposition from the Vendor to the Authority.

4.14.4 **Decision.** After the Chief Executive Officer or Governing Board has determined to suspend or debar a Vendor, the Chief Executive Officer shall cause the Director of Procurement to notify the Vendor in writing of the Debarment or the period of Suspension and the reasons for the action taken.

4.14.5 **Public Entity Crime.** Any Vendor who has been convicted of a public entity crime as defined by Florida Statutes § 287.133, or any successor provision, shall not be able to transact business with the Authority to the extent specified in Florida Statutes § 287.133(3)(a).

4.15. **Remedies for Solicitations or Awards in Violation of Law.**

4.15.1 If, prior to Bid or Proposal opening or the closing date for receipt of Proposals, the Director of Procurement, after consultation with legal counsel, determines that a solicitation is in violation of Federal or State law, the solicitation shall be canceled or revised to comply with applicable law.

4.15.2 If, after Bid or Proposal opening or the closing date for receipt of Proposals, the Director of Procurement, after consultation with legal counsel, determines that a solicitation or a proposed award of a contract is in violation of Federal or State law, the solicitation or proposed award shall be canceled.

4.15.3 If, after an award, the Director of Procurement, after consultation with legal counsel, determines that a solicitation or award of a contract was in violation of Federal or State law, action shall be taken as required by the provisions of the law violated, or, if no specific action is required, then:

A. If the person awarded the Contract has not acted fraudulently or in bad faith:

1. The Contract may be ratified and affirmed, provided it is determined that so doing is in the best interests of the Authority, or

2. The Contract may be terminated and the person awarded the Contract may be compensated for the actual expenses reasonably incurred under the Contract prior to the termination.

B. If the person awarded the Contract has acted fraudulently or in bad faith, or in violation of the Authority's rules, the contract may be declared null and void or voidable, if such action is in the best interest of the Authority. In the event of a dispute regarding the nature of or the characterization of

the awarded person's conduct, the prevailing party shall be entitled to attorney's fees and court costs, relating to the litigation of said dispute.

- 4.16. **Personal Property Management.** "**Personal Property**" is defined as items used (not consumed) to produce goods and services supporting Authority's mission. Personal Property includes, but is not limited to, office equipment, industrial plant equipment, vehicles, rolling stock, material handling equipment, information technology equipment and other types of "**Assets**" with an original cost or value of \$300.00 or more, with a normal life expectancy of one (1) year or more, which is not fixed in place, not part of a structure or facility and is practical to identify by marking. Personal Property management includes control, tracking and proper disposition.
- 4.16.1 Authority may assign a property officer to manage the organization's Personal Property program. This position will be responsible for the supervision, control, and disposition of Personal Property and will serve as the agency's custodian of surplus property.
- 4.16.2 All property purchased with any percentage of FTA participation must follow FTA guidelines for the Management of Real Property, Equipment and Supplies per chapter II of the FTA Grant Management Guidelines Number C 5010.1C. Disposition requirements are based on market value of surplus property and normally require FTA notification.
- A. Surplus Property Disposition. After classifying Personal Property as "**Surplus**", the custodian can dispose of the Personal Property, in accordance with FTA and State guidelines.
- 4.16.3 Governing Board Members, chiefs, management and employees will ensure that in donating surplus property in accordance with FTA and State guidelines, all ethical regulations and principles will be considered and adhered to.
- 4.16.4 The Governing Board must approve any sale or transfer of surplus property with a value of \$5,000.00 or more.
- 4.17. **Metric System.** For Procurements involving Federal funds, the Authority will accept property and services with dimensions expressed in metric requirements, to the extent practicable and feasible, in compliance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. Sections 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," June 25, 1991, 15 U.S.C. Section 205a note; and applicable Federal regulations.

I hereby certify that the foregoing Administrative Rule 4 was amended by the Governing Board of the Authority at its duly called meeting on March 22, 2012.


Deborah Morrow, Assistant Secretary

ADMINISTRATIVE RULE 6

SUBJECT: DISPUTE RESOLUTION

EFFECTIVE DATE: March 22, 2012¹

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.

¹ This is a completely new Administrative Rule which 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 amended by the Governing Board at its meeting held on March 22, 2012.

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:

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. 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. 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]. 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 SET FORTH IN SECTION 6.5 (INCLUDING SECTION 6.5.1 – 6.5.4) SHALL APPLY TO 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 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.

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:

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 without first obtaining the approval of the Governing Board if each of the following two conditions is met:

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

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 without first obtaining the approval of the Governing Board, irrespective of whether the dispute, claim or controversy 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:

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

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 A** or **B** at its first Board meeting following the settlement; then in the case of settlements under **Section B** above, notice will be given to the Governing Board as soon as practicable but in any event within ten (10) business days.

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.

- 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 **6.6.2** below:
- 6.6.1 **Settlements of \$50,000 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 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.
- 6.6.2 **Settlements over \$50,000.** The Authority's Chief Executive Officer is authorized to settle any dispute, claim or controversy 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.
- 6.6.3 **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 **6.6.2** above at its first Board meeting following the settlement. In regard to settlements over \$50,000, notice will also be given to the Governing Board as soon as practicable but in any event within ten (10) business days.

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 on March 22, 2012.

Deborah Henderson, Assistant Secretary