

MEMORANDUM



TO: LYNX Board of Directors:
Mr. Carlton Henley, Chairman
Mr. Brandon Arrington, Vice Chairman
Mayor Buddy Dyer
Mayor Richard Crotty
Ms. Noranne Downs

cc: Ms. Lisa Darnall
Mr. Bert Francis
Mr. Edward Johnson
Ms. Linda Watson

FROM: Patrick T. Christiansen

DATE: May 19, 2010

MATTER: LYNX Administrative Rules

SUBJECT: Comments on Proposed Changes to LYNX Administrative Rules

This Memorandum is intended to summarize for the Board Members the substance of the recommended changes to the various LYNX Administrative Rules which have been previously sent to you. Many of the changes are merely “clean up” but some are material or substantive. The material changes proposed are the following:

Also, there has been moved to the new Administrative Rule 6 the dispute process so Administrative Rule 6 will cover all dispute matters for LYNX.

Rule Reference

Material Change

Rule 1

There are no material changes in Rule 1. The changes basically move to Administrative Rule 1 all the definitions in the other Administrative Rules and create some new definitions.

Rule 2

Many of the changes are more administrative such as clarifying how the Governing Board is composed, its Members are designated, etc. This is to a large extent consistent with the Statute. Some changes however are material.

2.3.1

The Statute is somewhat unclear as to the term of the Members. This new language clarifies that the terms run equal with the fiscal year of LYNX and that persons serve for that particular year and continue unless there is another

appointment made in accordance with the Statute.

- 2.3.5 This clarifies that the LYNX Board can appoint other officers who are not Members of the Board. It also indicates that if a Clerk is ever needed (e.g., to attest to a signature), that there can be a Clerk and if it is not so designated by the Board, then the Assistant Secretary of the CEO can perform that function.
- 2.3.6 This continues with the concept that the Board Members cannot individually micromanage the operations of LYNX. However, there was added at the end the ability for the Chairman to be more active in regard to the operations of LYNX in order to exercise oversight functions, etc. This takes into account how the current and past Chairmen have functioned.
- 2.4 The old Rule permitted Members to attend the Governing Board by telephone, etc. This is not generally permitted for these type of bodies and this language has been eliminated.
- 2.4.5 The meeting agendas have been “loosened up” a little bit to permit the agenda to be taken in whatever order the Chairman wants to take and also to permit blue sheet items to be presented for action at the actual meetings, without “advance notice” in being on the agenda.
- 2.4.7 This entire Section has been added to establish a Board approved procedure for Executive Sessions both in the case of dealing with litigation matters and collective bargaining matters. These effectively parallel the State Statute for Executive Sessions.
- 2.6 There has been added a Section for policies and/or procedures which would permit the CEO to adopt and/or approve for internal LYNX administrative matters policies and procedures. These cannot conflict with Board directives or Administrative Rules. The policies and/or procedures will be furnished to the Governing Board for information and the Governing Board can of course change those. For example, vacation policy, HR policies, etc. would be examples of these types of policies that the CEO could adopt and/or approve.
- 2.9 This entire Section is basically new and addresses the Senior Officers of the Authority. This in effect is the Senior Staff. It clarifies that all Senior Staff hiring, compensation and conditions of employment must be approved by the Governing Board.
- 2.9.1 This is a substantial re-write in regard to the CEO and the powers of the CEO. Before, the old Rule did not really give the CEO much if any authority. What is done here is to expand that somewhat.
- 2.9.1(a) This provides that the CEO has general management and control over the affairs of the Authority, subject to various limitations in the Administrative

Rules and the actions of the Governing Board.

2.9.1(b) This is a material change that authorizes the CEO to take whatever action may be necessary in order to carry out the actions of the Governing Board including for example where the Governing Board approves a contract. However, the CEO could not take any actions if they are either materially different that what was authorized by the Governing Board or materially adverse to the Authority. In either of such cases, it would have to go back to the Governing Board. Thus, the CEO can carry out the directives of the Governing Board (which is good) but also establish the limits beyond which further Board approval would be required.

2.9.1(c) In light of the fact that the LYNX Board now meets every two months, if there arises a financially exigent situation (where LYNX really needs to take some action in order to take advantage of a financial situation or to avoid a loss), then the CEO after speaking with and obtaining the approval of the Chairman of the Governing Board, can take that action. This would need to be reported fairly promptly to the Governing Board and further discussed at the next meeting.

2.12 This is a major rewrite with respect to the ability of the Governing Board to establish committees. The real change is that the Audit Committee has now been renamed "Oversight and Audit Committee". There are no real material changes and this simply codifies how the "Audit Committee" is currently operating.

Rule 4

This is the Administrative Rule for the procurement process by LYNX. Most of the changes are "clean up" such as moving all the definitions to Administrative Rule 1, and moving all the dispute resolution provisions to a new Rule 6.

4.4--Chart There are some changes to the chart that are material but these are discussed in regard to the specific Sections below. While the chart is helpful, the actual authority is in the individual Sections.

4.4.2—Major Contracts This incorporates the concept for the CEO that once the Governing Board approves a contract, the CEO and the other Senior Officers can carry out that matter unless there is a material change or it is adverse to the Authority (in which case, it needs to go back to the Board for approval). It also makes clear that the Chairman can sign contracts.

4.4.5 Before, the CEO could delegate but only for contracts \$50,000 or less. Now, the CEO can delegate his/her authority for contracts \$150,000 or less but if the contract is above \$50,000, it can only go to the CFO and/or CAO. Another change is that the CEO needs to keep the Board advised as to this

delegated authority including advising the Board when there are any changes.

- 4.4.9 In regard to the fuel contracts, this is a material rewrite to clean up matters brought about by the J. H. Williams lawsuit. It puts in the Administrative Rule a number of provisions which in effect would safeguard LYNX from the Williams situation. For example, in regard to future contracts, they could only be valid if they are actually executed by the CEO. We would not have the email situation then that arose in the Williams suit (i.e., a “he said—she said” situation). It also requires that Senior Staff come back to the Board when it would ever appear that the price for fuel is rising in such a way as to make it difficult for LYNX to meet its budget.
- 4.6.2 Now, LYNX needs to go to the Board every time it wants to do an RFP. Since the Board meets every two months, that could create some issues. The CEO has the ability to do an RFP where it is \$150,000 or less. Now, if there is a timing issue and you cannot go to the Board, then the CEO with the prior approval of the Chairman, can do an RFP.
- 4.6.3 We clarified some of the conditions of the SEC Committee to make it clear that the Governing Board from time to time can impose whatever conditions it wants on the process. For example, a Governing Board Member could sit in on lobbying contract matters.
- 4.6.8 This also gives the Governing Board the ability to change the procurement process on a case by case basis. For example, it may be that the Board does not want the SEC to rank the bidders but to simply qualify them and send them all to the Board for the Board to make that decision. Unless the Board however indicates otherwise, the SEC would then typically rank the bidders and send it to the Board.
- Rule 6 This is a completely new Rule and moves into this Rule all the dispute processes that apply whenever LYNX is involved. It also establishes certain general policies such as LYNX does not waive sovereign immunity.
- 6.4 This sets forth the dispute process which arises in connection with the procurement process, both before and after any decisions by the SEC. Before, this was in Rule 4. It has been “substantially cleaned up” to be more consistent with how LYNX now addresses disputes. For the most part, the final appeal is to the Chief Financial Officer and there is nothing contained in this process for direct appeal to the Governing Board. As a practical matter, when a procurement comes to the Governing Board, presumably the aggrieved party would then be present to complain.
- 6.5 This Section applies to disputes involving contracts to which LYNX is a party. It sets forth the process how those disputes are to be resolved and the appeal process with the vendor. It also sets forth certain authority for the

CEO to settle disputes and when that authority needs to come back to the Board. Some clean up is needed on these matters, but we now have a process to address contractual disputes and make clear how they are to be handled.

- 6.6 This Section deals with the settlement of lawsuits involving tort claims and workers compensation claims. LYNX budgets for these type of claims during the year and what this does is to set forth the process by which the Senior Staff can settle claims. For \$50,000 or less, Senior Staff can handle the settlement; otherwise, it needs to go to the Governing Board. All settlements must be within the budget process.

Rule 10 This Rule relates to various activities at LYNX facilities and how they are regulated. This Rule currently is in effect and prohibits both political activities and solicitations and the changes are simply to clean it up to be more consistent with how LYNX currently deals with these matters. The changes are more administrative.

Rule 11 This is a completely new Rule and relates to the ability of LYNX to apply for grants. Again, normally LYNX Staff would come back to the Governing Board before it ever applied for any grant. However, since the LYNX Board meetings are now two months apart, this authorizes the CEO to execute grant applications which are \$150,000 or less. In the event the grant request exceeds that amount, the CEO can do that if there is a timing issue as long as the CEO has first obtained the approval of the Chairman. We will also add to this Rule that grant requests will be reported at the next Board meeting.

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ADMINISTRATIVE RULE 1
ADOPTION OF ADMINISTRATIVE RULES AND DEFINITIONS

EFFECTIVE DATE: January 19, 2006

DATE: _____, 2010 (NOTE: This Rule was amended and re-adopted by the Governing Board at this Meeting).

SCOPE:

This Administrative Rule shall apply to all the Authority, its officers, managers, employees, or agents of the Authority and Members of the Governing Board 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: ~~RULE 1: Adoption of Administrative Rules and Definitions and Adoption~~

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. ~~Section 1.1~~ **Definitions.** Except as otherwise expressly stated in ~~these~~the Administrative Rules, the following terms shall have the following meanings for the purposes of these Administrative Rules:

1.2.1 ~~1.1.1.~~ **“Act”** means Part II of Chapter 343 of Florida Statutes, as amended from time to time, and any successor provision thereto.

1.2.2 ~~1.1.2.~~ **“Administrative Rules”** or **“Rules”** means ~~these~~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 ~~1.1.3.~~ **“Authority”** means the Central Florida Regional Transportation Authority, created and established pursuant to the Act.

1.2.5 ~~1.1.4.~~ **“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 ~~of these Administrative Rules, 2~~, adopted by the Governing Board to regulate the affairs and the conduct of business of the Authority.

1.2.12 ~~1.1.5.~~ **“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 Executive Officer”~~ **Administrative Officer** or **“CAO”** means the officer responsible for the administrative management of the Authority. If there is not a person serving as the CAO or the CAO position is not implemented, then, in that event, either the Chairman of the Board or the Chief Executive Officer may designate another officer of the Authority to assume the responsibilities and exercise the powers of the Chief Administrative Officer.

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. If there is not a person serving as the CFO or the CFO position is not implemented, then, in that event, either the Chairman of the Board or the Chief Executive Officer may designate another officer of the Authority to assume the responsibilities and exercise the powers of the Chief Financial Officer.

1.2.16 **“Chief Of Staff”** means the officer responsible for the financial management of the Authority, and is designated as such. If there is not a person serving as the Chief of Staff or the Chief of Staff position is not implemented, then, in that event, either the Chairman of the Board or the Chief Executive Officer may designate another officer of the Authority to assume the responsibilities and exercise the powers of the Chief of Staff.

1.2.17 **“Chief Operating Officer”** or **“COO”** means the officer responsible for the general operations of the Authority, and is designated as such. If there is not a person serving as the COO or the COO position is not implemented, then, in that event, either the Chairman of the Board or the Chief Executive Officer may designate another officer of the Authority to assume the responsibilities and exercise the powers of the Chief Operating Officer.

1.2.18 ~~1.1.6.~~ **“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 “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.
- 1.2.25 “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.
- 1.2.26 ~~1.1.7.~~ “Executive Officer” means Department Chief, Deputy Department Chief, Chief of Staff, 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.

- 1.2.27 ~~1.1.8.~~ “FDOT” shall mean the Florida Department of Transportation.
- 1.2.28 “FTA” ~~means the~~ shall mean the U.S. Department of Transportation Federal Transit Administration.
- 1.2.29 “Finance Policy and Procedure” means the policy and procedure established from time to time by the Finance Department of the Authority.
- 1.2.30 “Financially Exigent Agreement” means an agreement entered into or renewed in accordance with Section 4.4.13 of Administrative Rule 4.
- 1.2.31 “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.
- 1.2.32 ~~1.1.9.~~ “Fiscal Year” means October 1 through September 30.
- 1.2.33 “Fuel Contract” means a Contract pursuant to which the Authority purchases fuel for its ongoing operations.
- 1.2.34 “General Provisions Documents” has the meaning set forth in Section 4.10 of Administrative Rule 4.
- 1.2.35 “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.
- 1.2.36 ~~1.1.10.~~ “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.
- ~~1.1.11. “Governing Board” means the governing body or “Board” of the Authority created and established, and vested with the legal authority to govern and manage the Authority, pursuant to the Act.~~
- ~~1.1.12. “Majority of the Members” means three (3) or more Members of the Governing Board.~~
- 1.2.37 “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.
- 1.2.38 “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.

1.2.39 ~~1.1.13.~~ **“Material Interest”** means direct or indirect ownership of more than ~~five~~ percent (5%) of the total assets or capital stock of any business entity.

1.2.40 ~~1.1.14.~~ **“Member”** or **“Members”** mean the individual, or any two or more thereof, appointed to and serving on the Governing Board pursuant to the Act.

1.2.41 **“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.

1.2.42 **“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.

1.2.43 **“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.

1.2.44 ~~1.1.15.~~ **“Person”** means ~~any individual, firm or corporation~~ an individual, partnership, corporation, limited liability company, association, joint stock company, trust, firm, joint venture, or unincorporated organization.

1.2.45 **“Personal Property”** shall have the meaning set forth in **Section 4.16** of Administrative Rule 4.

1.2.46 **“Piggybacking”** or **“Piggyback Contract”** shall have the meaning set forth in **Section 4.3.2(G)** of Administrative Rule 4.

1.2.47 **“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.

1.2.48 **“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.

1.2.49 **“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.

1.2.50 **“Procurement/Contracts Manager”** means any person designated as the Procurement/Contracts Manager by the Chief Executive Officer. The Procurement/Contracts Manager shall be in charge of the Purchasing and Contracts Division and shall be authorized to enter into, execute, and administer Contracts on behalf of the Authority within the authority granted the Procurement/Contracts Manager under the Administrative Rules.

1.2.51 **“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.

1.2.52 **“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.

1.2.53 **“Proposer”** means a Vendor who has submitted a Proposal to the Authority.

1.2.54 ~~1.1.16.~~ **“Public Transportation”**,” **“Public Transportation Facilities”** and **“Public Transportation System”** each shall have the meaning set forth in the Act.

~~1.1.17. “Quorum” means a simple majority of the voting Members of the Governing Board.~~

1.2.55 “Purchase Order” means the Authority’s document used to authorize a purchase transaction with a Vendor.

1.2.56 “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.

1.2.57 “Purchasing and Contracts Division” means the applicable department or division of the Authority responsible for the administration of Procurements and the Procurement process and Contracts on behalf of the Authority.

1.2.58 ~~1.1.18.~~ “Relative” means any individual defined as a relative under Section 112.312, Florida Statutes, or its successor provision.

~~Section 1.2. Effective Date, Establishment, Application and Construction. These Administrative Rules shall become effective upon adoption or such other date as may be established by the Governing Board.~~

~~1.2.1. Establishment of Rules. The Governing Board has established these 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.~~

~~1.2.2. Application and Construction. These 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.~~

~~1.2.3. Adoption and Amendment. These Administrative Rules or an amendment thereto shall be adopted by the vote of a Majority of the Members.~~

~~1.2.4. Binding Effect, Exceptions, Amendments. The Governing Board intends that these Administrative Rules constitute the rules of the Authority, with legally binding force and effect upon the Authority, its officers, employees and agents and the Governing Board itself. Amendments to these Administrative Rules shall be effective if and only if adopted as herein provided.~~

1.2.59 “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.

1.2.60 “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.

1.2.61 “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.

1.2.62 “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.

1.2.63 “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.

1.2.64 “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.

1.2.65 “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.

1.2.66 “Senior Officer” shall mean the 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.

1.2.67 “Senior Staff” shall mean all the Senior Officers of the Authority (which includes the CEO).

1.2.68 “Short-Term Bus Service Agreement” means an agreement entered into in accordance with Section 4.4.12 of Administrative Rule 4.

1.2.69 “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.

1.2.70 “**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.

1.2.71 “**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.

1.2.72 “**Statement of Responsibility**” shall have the meaning set forth in **Section 4.4.5** of Administrative Rule 4.

1.2.73 “**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.

1.2.74 “**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.

1.2.75 “**Vendor**” means an actual or potential supplier of a good and/or service to the Authority.

1.2.76 “**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.

ADMINISTRATIVE RULE 10
SOLICITATION ~~ON LYNX~~ AT AUTHORITY FACILITIES

EFFECTIVE DATE: ~~February 28, 2008~~ _____ (Adopted by the Governing Board at this Governing Board meeting.)

SCOPE:

This Administrative Rule applies to certain activities at the Authority's facilities, including activities at LYNX Central Station Building (and also at any other Authority facility). ~~It.~~ This Administrative Rule establishes ~~the~~ guidelines and ~~procedure~~ procedures to be followed by the Authority, the Governing Board, and Authority Staff in regard to ~~certain such~~ activities ~~at Authority facilities (including the LCS)~~.

AUTHORITY:

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

Part II, Chapter 343, Florida Statutes

RULE 10: Prohibition on Certain Activities at ~~Central Station~~ Authority Facilities

~~Section~~ 10.1 **Definitions.** In addition to those terms defined in Rule 1 of these Administrative Rules, the following terms shall have the following meanings for ~~the~~ purposes of this Rule:

10.1.1 ~~"Central Station Building and its Contiguous Areas"~~ "Contiguous Area" means, with respect to a particular Facility, the area of land which is owned or operated by the Authority and which surrounds or abuts the Facility. With respect to the LYNX Central Station, the Contiguous Area includes the support vehicle parking area, the courtyard, as well as the leased property adjacent the Central Station at the intersection of Amelia and Garland.

10.1.2 "Facility" means any facility owned or operated by the Authority for the purpose of providing mass transit services to the public, and includes facilities where passengers board and exit vehicles, facilities where vehicles are maintained and refueled, and facilities where administrative services are performed. The term "Facility" includes the LYNX Central Station, the LYNX Operating Center Facility, located at 2500 LYNX Lane, Orlando, Florida 32804, the LYNX South Street Facility, located at 1200 W. South Street, Orland, Florida 32805, and all the Contiguous Areas to any Facility.

10.1.3 “LYNX Central Station” means the Authority's Central Station building, located at 455 North Garland Avenue, Orlando, Florida 32801, and which includes, but is not limited to, the interior of the Central Station building, the curtilage and exterior canopied areas used for arriving and departing ~~busses~~buses, ~~and the~~ outdoor passenger waiting areas. ~~Contiguous areas surrounding the LCS includes the support vehicle parking area and the leased property adjacent the Central Station at the intersection of Amelia and Garland,~~ and the Contiguous Areas.

~~Section~~ 10.2 **Policy and Prohibited Activities.** The principal purpose of the Authority's ~~Central Station Building~~Facilities is to facilitate safe and efficient travel. The Authority has no intent to designate its Facilities, including the LYNX Central Station ~~Building~~, as a place for expressive conduct. Given the relatively small size of the LYNX Central Station ~~Building~~building, the narrowness of its bus lanes, and the limited outside areas in which passengers can congregate, its physical characteristics are not conducive to expressive activity or solicitation of passengers. To this end, and to improve safety and prevent passenger and employee interference with solicitors, the impeding of passenger foot traffic, and delays, the Authority has adopted the following prohibitions on certain activities at its Facilities, including the LYNX Central Station ~~Building~~.

10.2.1 **Prohibited Activities.** The following activities are prohibited at ~~Central Station Building~~the Authority's Facilities (which by definition and for clarification, would include the LYNX Central Station, and the Contiguous Areas around such Station):

A. **Political Activities.**

- (i) The distribution of petitions, leaflets, buttons, stickers, handbills, and other printed materials;
- (ii) The registration of voters, collection of signatures for political petitions, referenda, and signature drives; and
- (iii) Protests, marches, and sit-ins.

B. **Solicitations:**

- (i) The sale or distribution of any merchandise;
- (ii) The sale or distribution of flyers, handbills, brochures, pamphlets, leaflets, books or other printed or written material; and
- (iii) The solicitation of funds.

10.2.2 **Exempt Activities.** The following activities are exempt from the prohibitions in **Subsection 10.2.1:**

- A. Events sponsored by the Authority which are for the benefit of the Authority's employees.
- B. -Events sponsored by the Authority which constitute or are a part of an advertising campaign designed to promote the Authority, events sponsored by the Authority which are designed to raise revenue for the Authority or promote public awareness of the Authority's transportation offerings, or events sponsored by the Authority for the benefit of its ridership or the community in which the Authority operates (including, by way of illustration, ~~but not limited to,~~ "Fun Fridays").
- C. Charitable events conducted by federally tax-exempt, 501(c)(3) nonprofit organizations which are held at the LYNX Central Station ~~Building~~ in accordance with applicable Authority policies.
- D. Solicitations described in **Section 10.2.1(B)** by the Authority or its licensed vendors.

~~Section 10.3 **Other Authority Facilities.** Although this Rule primarily relates to the Central Station Building, the policies set forth herein also apply to any other facilities owned by the Authority from time to time.~~

ADMINISTRATIVE RULE 11

SUBJECT: MISCELLANEOUS MATTERS

EFFECTIVE DATE: _____, 2010¹

SCOPE:

This Administrative Rule has been established to address matters that affect the Authority and which are not otherwise addressed in any of the other Administrative Rules.

AUTHORITY:

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

Part II, Chapter 343, Florida Statutes

RULE 11: Miscellaneous Matters

11.1 **Grant Applications.** The Governing Board must approve the execution and filing of all grant applications; *provided, however*, that the Chief Executive Officer is authorized to execute and cause to be filed grant applications without the consent of the Governing Board in either of the following situations:

11.1.1 Where the amount of the grant application is One Hundred and Fifty-Thousand Dollars (\$150,000) or less.

11.1.2 (a) Where the amount of the grant application is over One Hundred and Fifty-Thousand Dollars (\$150,000); (b) the Chief Executive Officer concludes that a Financially Exigent Situation would be created by waiting until the next regularly schedule meeting of the Governing Board to seek approval for the execution and filing of the grant application; and (c) the Chief Executive Officer has first obtained the approval of the Chairman.

The Chief Executive Officer may delegate his or her authority to execute and cause to be filed grant applications under **Section 11.1.1** and/or **11.1.2** to any Senior Officer if the Chief Executive Officer anticipates that he or she will be unavailable to execute and cause to be filed said grant applications, and such unavailability will result in there being a Financially Exigent Situation.

¹ This is a completely new Administrative Rule which has been adopted by the Administrative Board at its meeting held on _____, 2010.

ADMINISTRATIVE RULE 2
BOARD GOVERNANCE (BYLAWS)

~~EFFECTIVE DATE: January 19, 2006~~

DATE: _____, 2010 (NOTE: This Rule was amended and restated in its entirety by the Governing Board at this Meeting).

SCOPE:

This Administrative Rule ~~shall apply to all officers, managers, employees, or agents of the Authority and Members of the Governing Board~~ sets forth the bylaws of the Authority pursuant to section 343.64(2)(h), Florida Statutes, to regulate the affairs and the conduct of the business of the Authority.

AUTHORITY:

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

Part II, Chapter 343, Florida Statutes

~~**RULE 2: BYLAWS**~~

RULE 2: Bylaws

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

2.2. ~~Section 2.1.~~ **Adoption of Bylaws.** The rules set forth in this Rule 2 shall constitute the ~~Bylaws~~bylaws of the Authority for the purposes of the Act, and shall govern the affairs and the conduct of the business of the Authority with respect to the matters addressed herein. ~~The Secretary to the Governing Board shall maintain a compilation of the Administrative Rules to be made available for public inspection at the offices of the Authority.~~

2.3. ~~Section 2.2.~~ **Governing Board.** The Governing Board shall be vested with all powers provided under the Act to carry out the purposes set forth in the Act. All powers of the Governing Board not expressly delegated to an official, employee or agent of the Authority pursuant to these Administrative Rules or other official action of the Governing Board are reserved to the Governing Board.

~~2.2.1.—~~

2.3.1 **Composition.** The Act provides that the Governing Board shall be ~~composed of such Members as provided in the Act.~~comprised of five voting members as follows:

- A. The chairs of the county commissions of Seminole, Orange, and Osceola Counties, or another member of the commission designated by the county chair of that commission, shall each serve as a representative on the Board for the full extent of his or her term (as described below):
- B. The mayor of the City of Orlando, or a member of the Orlando City Council designated by the mayor, shall serve on the Board for the full extent of his or her term (as described below):
- C. The Secretary of Transportation shall appoint the district secretary, or his or her designee, for the district within which the area serviced by the Authority is located and this member shall be a voting member.

Each Member shall serve on the Board for a term of one year, which term shall begin and end on the first and last day of each Fiscal Year. Each Member's term shall automatically renew for successive one year terms unless a new Member is designated in accordance with **Section 2.3.2.**

2.3.2 **Designation of Members.**

- A. The county chairs of Seminole, Orange, and Osceola Counties are permitted to designate persons other than themselves to serve as Members of the Governing Board, provided that each such person designated by a county chair is a member of the county commission.
- B. The mayor of the City of Orlando is permitted to designate a person other than himself or herself to serve as a Member of the Governing Board, provided that such person is a member of the Orlando City Counsel.
- C. The Secretary of Transportation is permitted to designate a person other than the district secretary for the district within which the area serviced by the Authority is located.

Except as otherwise permitted by the Chairman, any person so designated to be on the Governing Board for a particular Fiscal Year pursuant to this **Section 2.3.2** must be designated before the end of the previous Fiscal Year and such designation must be for an entire Fiscal Year term.

2.3.3 **Replacements.** During any particular Fiscal Year term, any vacancy on the Governing Board shall be filled by the person authorized to make a

designation with regard to the empty seat pursuant to Section 2.3.2 and only for the balance of the unexpired Fiscal Year term.

2.3.4 ~~2.2.2.~~ **Officers of the Governing Board.** The Governing Board shall annually elect from its Members a Chairman, Vice Chairman, and Secretary ~~and.~~ The Governing Board may also elect from its Members a Treasurer; ~~who.~~ The officers of the Governing Board shall have the ~~authority~~authorities and ~~such~~ duties set forth in these Rules for such officers. or as otherwise may be assigned to them by the Governing Board. All officers shall be elected by the Governing Board at an organizational meeting held pursuant to ~~Section 2.3.2.4.~~ Officers shall be elected by ~~a Majority of~~ the Members, and shall hold their respective offices from the first day of each Fiscal Year for a term of one year, or until their respective successors are chosen, if later.

A. ~~2.2.3.~~ **Removal of Officer from Office Governing Board; Vacancies.** An officer of the ~~Authority~~Governing Board may be removed from office at any time, with or without cause, by the affirmative vote of the Majority of the Members. Any vacancy occurring in an ~~officer position~~office on the Governing Board shall be filled by the Governing Board for the remainder of the term at a regular or special meeting of the Governing Board.

B. ~~2.2.4.~~ **Office of Chairman.** The Chairman of the Governing Board shall preside at meetings of the Governing Board, call special meetings, sign and may execute deeds, mortgages, bonds, contracts and other documents and instruments on behalf of the Authority, and perform such other duties as may be required by law or directed by the Governing Board.

C. ~~2.2.5.~~ **Office of Vice Chairman.** The Vice Chairman shall have the powers and perform such duties as may be delegated to that ~~individual~~office by the Governing Board, and in the event of the death, absence or inability of the Chairman to act, perform the duties and exercise the powers of the Chairman.

D. ~~2.2.6.~~ **Office of Secretary.** The Secretary shall keep the minutes of all meetings of the Governing Board and such other meetings of the Authority for which minutes are required to be kept or, if not required by law, that the Governing Board deems desirable to be kept. The Secretary shall attest to the signature of other officers of the ~~Authority~~Governing Board when required or necessary. The Secretary to the Governing Board shall maintain thorough and accurate records of the Administrative Rules, the agendas of meetings of the Governing Board, resolutions and other instruments approved by the Governing Board. The Secretary shall perform the duties customarily performed by the secretary to

a governmental entity, as well as such other duties as may be prescribed by the Governing Board.

E. ~~2.2.7.~~ **Office of Treasurer.** The Treasurer shall be responsible for the financial affairs and records of the Authority, and shall have the custody of all the funds and securities of the Authority, except as may be otherwise provided by the Governing Board, and shall ~~make such disposition of~~ disburse the funds and other assets of the Authority as ~~directed~~ may be ordered by the Governing Board. The Treasurer shall keep or cause to be kept a record of all money received and expended, and all other financial transactions of the Authority. The Treasurer shall perform such duties as are customarily performed by the treasurer of a governmental entity and as may be required by general law or as directed by the Governing Board.

2.3.5 ~~2.2.8.~~ **Office of Clerk and Assistant Officers to the Governing Board.** ~~The Clerk to the Governing Board shall be responsible for such matters, as the Governing Board shall determine and as specified in these Rules.~~

~~2.2.9.~~ Assistant Officers;

A. **Clerk to the Governing Board.** The Governing Board shall have ~~the power to create and to fill by appointment, for such term as the Governing Board may see fit, such additional~~ a Clerk to carry out the duties of a clerk pursuant to applicable law and these Administrative Rules, and such other duties as the Governing Board may assign to the Clerk from time-to-time. If the Governing Board shall fail to appoint a Clerk for any particular Fiscal Year, or if the person appointed to the office of Clerk by the Governing Board shall be unable to perform his or her duties due to death, absence or inability, the duties of the Clerk shall be performed by the Assistant Secretary, if one exists, or, if there is no Assistant Secretary, then by the Chief Executive Officer.

B. **Assistant Officers.** The Governing Board may from time-to-time appoint one or more Assistant Secretaries, one or more Assistant Treasurers ~~and other officers as the Governing Board may see fit, and to prescribe such duties for them to perform as may the Governing Board may deem necessary, which persons may or may not be Members. The Assistant Secretary shall serve as the Clerk to the Governing Board, with such duties and responsibilities as set forth in the Administrative Rules.,~~ and such other officers and agents as it shall deem necessary, and may define their powers and duties. Any number of offices may be held by the same person.

C. **Not Required to be Members.** Officers appointed pursuant to this Section 2.3.5 need not be Members.

2.3.6 ~~2.2.10.~~ **Authority of Members.** ~~No Member shall have authority to direct Officers or employees of the Authority with regard to any action or duty relating to the operations of the Authority.~~ Any direction as to the day-to-day operations of the Authority shall be made by action of the Governing Board and implemented by the Chief Executive Officer or such other person designated by the Governing Board. No individual Member shall have authority to direct Officers or employees of the Authority with regard to any action or duty relating to the day-to-day operations of the Authority. Notwithstanding anything to the contrary set forth in this Section 2.3.6, the Chairman is authorized to exercise oversight functions over and make inquires of the Officers and Authority employees.

2.4. ~~Section 2.3.~~ **Meetings of the Governing Board.** The Governing Board shall annually establish a schedule for meetings of the Governing Board. The Governing Board shall meet at the offices of the Authority, or, if directed by the Chairman, at such other location within or without the jurisdiction serviced by the Authority. All meetings of the Governing Board except as may otherwise be provided herein ~~below~~ and in accordance with applicable law shall be duly scheduled, subject to public notice and open to the public, to the extent required by, and in accordance with, Florida law. ~~Members may attend, vote, and participate in any meeting of the Governing board by telephone or other applicable interactive medium.~~

2.4.1 ~~2.3.1.~~ **Procedures of the Governing Board.** Meetings of the Governing Board shall be administered in accordance with Robert's Rules of Order, provided that ~~a Majority of~~ the Members may elect to deviate from said rules when it is in the best interest of the Authority.

2.4.2 ~~2.3.2.~~ **Actions, Voting Requirements.** ~~Except as otherwise required by general law or these Administrative Rules, (i) all official actions of the Governing Board shall be taken by resolution or motion, and (ii) shall be adopted by a Majority of the Members~~ If a quorum is present, the affirmative vote of a majority of the Members present at a meeting shall constitute an act of the Governing Board. Votes of the Members shall be cast by voice vote, unless the Chairman, Vice Chairman or a ~~Majority~~ majority of the Members present shall request an alternative method that is permitted by law. Resolutions as adopted shall be memorialized in writing and included for adoption of the minutes at the subsequent meeting of the Governing Board.

2.4.3 **Quorum.** The presence in person of a majority of the Members of the Governing Board shall constitute a quorum for the transaction of business.

2.4.4 ~~2.3.3.~~ **Adjournment; Reconvening.** Any meeting of the Governing Board at which a ~~Quorum~~ quorum is present may be adjourned by the vote of a ~~simple~~ majority of the Members ~~present~~. In the event no ~~Quorum~~ quorum is present on the day fixed for any meeting of the Board, such meeting may be cancelled and rescheduled by the Chairman, Vice

Chairman or Chief Executive Officer, to a time and date at which a quorum be obtained. At any reconvened meeting at which a quorum is present, the Governing Board may take any official action, which might have been taken at the original meeting.

2.4.5 ~~2.3.4.~~ **Meeting Agendas.** ~~The~~ Under the authority and auspices of the Chairman, the Authority shall prepare an agenda prior to each meeting of the Governing Board and shall provide appropriate notice thereof ~~in accordance with Florida law, prior to each meeting.~~¹ The agenda shall list the title of the items in the order they are intended to be brought before and considered. ~~Items on the agenda may be considered out of their stated order with the approval of the person designated to preside in his/her discretion. The agenda shall be specific as to items to be considered. Except in matters of emergency nature that may not have been known upon distribution of the agenda, all matters involving the exercise of agency discretion and policy-making shall be listed and summarized on the agenda.~~ by the Governing Board. With the consent of whomever is the Chairman presiding over any particular meeting, items may be brought before the Governing Board out of the order listed on the agenda for such meeting, and the Governing Board may act upon such items. With the consent of the Chairman or any two Members, items may also be brought before the Governing Board which are not listed on the agenda (i.e., “blue sheet items”), and the Governing Board may act upon such items.

~~2.3.5. Emergency, Special and Closed Meetings. The Governing Board may convene emergency meetings, special meetings and meetings closed to the general public, subject to and in accordance with the requirements of Florida law, when directed by the Chairman, Vice Chairman or a Majority of the Members.~~

2.4.6 ~~2.3.6.~~ **Organizational Meeting.** The Governing Board shall annually hold its organizational meeting during a regular business meeting prior to the end of the Fiscal Year for purposes of electing the officers of the Governing Board pursuant to these Administrative Rules, or, if the organizational meeting of the Governing Board cannot be held at such meeting, the election of the officers of the Governing Board shall be held at the next regularly scheduled meeting at which an election is practical.

~~2.3.7. Member Attendance. The elected officials serving as Member, Chairperson or Mayor of the Member’s jurisdiction may appoint a substitute for two meetings of the Governing Board within a fiscal year. For Orange, Seminole and Osceola Counties, the Chair or Mayor, as the case may be of the County and/or City, shall select such substitutes. Such substitute shall be~~

¹ The Authority is not subject to the Administrative Procedures Act, Chapter 120, Florida Statutes, because (i) it is a multi-county special district, with a majority of its governing board comprised of elected persons, and (ii) the rules governing the Authority were removed from the Florida Administrative Code pursuant to the Administrative Procedures Act, Chapter 96-159. However, the Authority is subject to Florida’s Government in the Sunshine Law, Florida Statutes § 286.011.

~~an elected official also serving the jurisdiction of the appointing Member. The appointed substitute shall have all of the rights of the Member including the right to vote in the meeting of the Governing Board.~~

~~Section 2.4. — Procedures. The Chief Executive Officer, pursuant to his or her authority under these Administrative Rules, may establish “Procedures” and shall make such Procedures available for public inspection at the offices of the Authority, and shall distribute said Procedures to the Members, executive administrators and employees of the Authority as the Chief Executive Officer deems in the best interest of the Authority. The Governing Board may request revisions, modifications, or amendments to the Procedures at any time and from time to time. The Administrative Rules shall have precedence over, govern and control the Procedures, and no provision of the Procedures shall conflict with the Administrative Rules.~~

2.4.7 **Emergency, Special and Closed Meetings.** Subject to and in accordance with the requirements of Florida law, the Governing Board may convene emergency meetings, special meetings and meetings closed to the general public when directed by the Chairman, Vice Chairman or a Majority of the Members.

A. **Executive Sessions to Discuss Pending Litigation.** The Authority’s legal counsel (“**Legal Counsel**”) may schedule a private consultation with the Governing Board to discuss pending litigation to which the Authority is presently a party before a court or administrative agency. This private session with the Governing Board is referred to herein as a “**Litigation Executive Session.**” The subject matter of the Litigation Executive Session shall be limited to settlement negotiations or strategy sessions relating to litigation expenditures in a case for which the Legal Counsel represents the Authority. A Litigation Executive Session must be called only when Legal Counsel has determined that such a session is absolutely necessary. The Authority must comply with Florida Statutes § 286.011(8) (as well as any amended or successor provisions of Florida law) in connection with the Litigation Executive Session.

1. **Notice of Executive Session.** A Litigation Executive Session shall be noticed in all of the following three ways:

a. The first notification occurs when the request for a Litigation Executive Session is placed on the Governing Board’s agenda as a discussion item.

b. The second notification occurs when a public notice of the Litigation Executive Session is published or posted. Such a notice shall be published or posted no less than three (3) full working days prior to the date of the Litigation Executive Session. This

notice must contain the names of all persons who will be attending the Litigation Executive Session. An attendee's title may not be substituted for an attendee's name.

c. The third notification occurs during an open session of the Governing Board when Legal Counsel announces to the Governing Board that he or she would like to advise the Governing Board concerning pending litigation, limited to settlement negotiations or strategy sessions relating to litigation expenditures in a particular case. If the Governing Board approves this request, at an open session, the Member chairing the meeting (or his/her designee) shall announce the commencement, estimated length of the Litigation Executive Session, and names of all persons who will be attending the Litigation Executive Session.

2. **Transcript of Litigation Executive Session.** Legal Counsel shall be responsible for hiring a certified court reporter for the Litigation Executive Session. The Litigation Executive Session shall be recorded, transcribed, and the record and transcription delivered to Legal Counsel. No portion of the Litigation Executive Session shall be held off the record. Legal Counsel shall, within a reasonable time, file the transcript with the clerk of the Board (or in the event there is no clerk, then the Authority officer or employee the Governing Board designates to carrying out the duties of a clerk) in a sealed envelope, instructing the clerk (or such other appropriate officer or employee) that the transcript is not a public record and will not become so until the litigation concludes in the case. At such time as the litigation is concluded and all timeframes for appeals have elapsed, Legal Counsel shall inform the clerk of the Board (or such other appropriate officer or employee) that the transcript may be made part of the public record.

3. **Participation in Litigation Executive Session.** Only the following persons are allowed to participate in a Litigation Executive Session (in addition to the Governing Board): the Authority's Chief Executive Officer or Chief Administrative Officer, Legal Counsel (including specially appointed outside counsel for the Authority in the litigation), and a court reporter. No other staff members or consultants are permitted to attend.

4. **No Final Approvals or Determinations.** Final approval of any determination resulting from the discussions held during the Litigation Executive Session shall be made only at an open session of the Governing Board.
5. **Reopening of Public Meeting.** At the conclusion of the Litigation Executive Session, the public meeting shall be reopened, and the elected official chairing the meeting shall announce the termination of the Litigation Executive Session and shall then either continue with other matters before the Governing Board or adjourn the public meeting.

B. **Executive Session to Discuss Actual or Impending Collective Bargaining Matters.** The Chief Executive Officer or his or her representative may schedule a private consultation with the Governing Board to discuss actual or impending collective bargaining matters. This private session with the Governing Board is referred to herein as a “**Collective Bargaining Executive Session.**” The subject matter of the Collective Bargaining Executive Session shall be limited to actual or impending collective bargaining. The Authority must comply with Florida Statutes § 447.605 (as well as any amended or successor provisions of Florida law) in connection with the Collective Bargaining Executive Session.

1. **Notice of Executive Session.** A Collective Bargaining Executive Session shall be noticed in all of the following three ways:
 - a. The first notification occurs when the request for a Collective Bargaining Executive Session is placed on the Governing Board’s agenda as a discussion item.
 - b. The second notification occurs when a public notice of the Collective Bargaining Executive Session is published or posted. Such a notice shall be published or posted no less than three (3) full working days prior to the date of the Collective Bargaining Executive Session. This notice must contain the names of all persons who will be attending the Collective Bargaining Executive Session. An attendee’s title may not be substituted for an attendee’s name.
 - c. The third notification occurs during an open session of the Governing Board when the Member chairing the meeting (or his/her designee) shall announce the

commencement, estimated length of the Collective Bargaining Executive Session, and names of all persons who will be attending the Collective Bargaining Executive Session.

2. **Participation in Collective Bargaining Executive Session.** Only the following persons are allowed to participate in a Collective Bargaining Executive Session (in addition to the Governing Board): the Authority's Chief Executive Officer, one or more of the Senior Officers who have been authorized in behalf of the Authority to negotiate the collective bargaining matters, and Legal Counsel (including specifically appointed outside counsel for the Authority in the collective bargaining matters). No other staff members or consultants are permitted to attend.
3. **No Final Approvals or Determinations.** Final approval of any determination resulting from the discussions held during the Collective Bargaining Executive Session shall be made only at an open session of the Governing Board.
4. **Reopening of Public Meeting.** At the conclusion of the Collective Bargaining Executive Session, the public meeting shall be reopened, and the Member chairing the meeting shall announce the termination of the Collective Bargaining Executive Session, and shall then either continue with other matters before the Governing Board or adjourn the public meeting.

2.5. ~~Section 2.5.~~ **Rulemaking.** The Governing Board may, from time to time, adopt additional rules, or supplement these Administrative Rules, to govern the operation of the ~~Public Transportation System and Public Transportation Facilities,~~ Authority and to regulate the affairs and the conduct of ~~the~~its business ~~of the Authority.~~ All rules, Administrative Rules, resolutions, procedures, or policies adopted by the Governing Board shall have precedence over, govern and control any rules, policies, and/or procedures established by the Chief Executive Officer and/or Authority staff.

2.6. **Policies and/or Procedures.** The Chief Executive Officer may establish and/or approve "Policies" and/or "Procedures," which shall be primarily administrative in nature, to carry out these Administrative Rules and other actions of the Governing Board and to regulate the internal operations of the Authority. Policies and/or Procedures may not change, or otherwise be in conflict with, these Administrative Rules or any actions of the Governing Board. All Policies and/or Procedures shall be made available for public inspection at the offices of the Authority. All Policies and/or Procedures shall be furnished to the Governing Board and the Governing Board may request revisions, modifications, or amendments to the Policies and/or Procedures at any time and from time to time.

These Administrative Rules shall have precedence over, govern and control the Policies and/or Procedures.

2.7. ~~Section 2.6.~~ **Contracts and Other Instruments.** The Governing Board may, from time to time, authorize and approve contracts, instruments, ~~agents~~agreements and other obligations of the Authority as permitted and authorized under the Act and these Administrative Rules.

2.8. ~~Section 2.7.~~ **Budget of the Authority.** The Treasurer (to the extent an individual is appointed to such office), Chief Executive Officer and Authority staff shall annually prepare a proposed budget of the Authority for the next Fiscal Year. Such budget shall set forth the anticipated service levels, expenses and revenues of the Authority, in accordance with Florida law and generally accepted governmental accounting principles. Such budget shall also reflect any preferences or policies of the Governing Board with respect to the information contained therein.

2.8.1 ~~2.7.1.~~ **Budget Presentation.** The Chief Executive Officer shall (i) present the proposed budget to the Governing Board for consideration ~~in a regularly scheduled meeting~~ at least forty-five (45) days in advance of the commencement of the next Fiscal Year, or on such other date as may be consented to by the Chairman, in sufficient detail to inform the Governing Board as to the fiscal and policy implications of such budget, and (ii) provide the Members of the Governing Board with additional information as they shall require to evaluate the budget.

2.8.2 ~~2.7.2.~~ **Approval of Budget.** The Chief Executive Officer and staff shall make any revisions, additions or deletions to the budget directed by the Governing Board subsequent to the budget presentation and submit the revised budget to the Governing Board ~~at a regularly scheduled meeting~~ in advance of the next ~~fiscal year~~Fiscal Year for the Governing Board's consideration and approval.

2.8.3 ~~2.7.3.~~ **Budget Status.** The Chief Executive Officer shall periodically update the Governing Board as to the status of and the Authority's compliance with the budget. Any change that (or series of changes that in the aggregate) constitutes a material deviation or variance from the approved budget shall be subject to the approval by the Governing Board in the form of a budget amendment. All budget amendments shall be submitted for approval by the Governing Board.

2.9. **Officers of the Authority.** The Governing Board from time-to-time may appoint one or more Senior Officers and such other officers and agents as it shall deem necessary, and may define their powers and duties. Any number of offices may be held by the same person. The hiring, compensation, and conditions of employment of all Senior Officers must be submitted to and approved by the Governing Board. All the Senior Officers (which would include the CEO) shall constitute the "Senior Staff" of the Authority.

2.9.1 ~~Section 2.8.~~ **Chief Executive Officer.** Pursuant to the Act, the Governing Board hereby establishes the position of the Chief Executive Officer of the Authority as the highest administrative official and chief executive officer of the Authority.

A. **Powers of the Chief Executive Officer.** The Chief Executive Officer shall, subject to the actions, control, and directions of the Governing Board (including the Chairman in accordance with Section 2.3.6 above and any limitations contained in these Administrative Rules, have general management and control over the affairs of the Authority. The Chief Executive Officer shall do and perform such duties as are assigned to him or her by the Governing Board, and shall have the authority contained in these Administrative Rules.

B. **Authorization to Carry out Reasonable Measures.** If the Governing Board has authorized the Authority to undertake a particular course of action (including the execution of any Contract by the Authority), the Chief Executive Officer is hereby authorized to take all reasonable actions necessary to carry out that particular course of action, including, but not limited to, the execution of the Contract and other documents, **provided, however,** if such actions either (i) materially deviate from what was authorized by the Governing Board, or (ii) said actions are materially adverse to the Authority (e.g., materially increase the financial obligation of the Authority), said actions may not be taken without the further approval of the Governing Board.

C. **Financially Exigent Situations.** Except as otherwise provided in these Administrative Rules to the contrary, the Chief Executive Officer is authorized to undertake any action on behalf of the Authority that Board authorization would otherwise be required for such action to be undertaken, if each of the following three requirements is satisfied:

1. The Chief Executive Officer concludes that a Financially Exigent Situation would be created by not waiting until the next regularly schedule meeting of the Governing Board to seek approval; and

2. The Chief Executive Officer obtains the approval of the Chairman of the Board prior to undertaking any action; and

Notwithstanding anything to the contrary set forth in these Administrative Rules, the Chief Executive Officer may not delegate to any other officer or employee of the Authority the Chief Executive Officer's power to undertake any action pursuant to this **Section 2.9.1.C.**

In regard to any actions taken under this Section 2.9.1.C, the Chief Executive Officer shall report the action taken to the Governing Board as soon as practicable thereafter (and in any event within ten (10) days after said action is taken). In addition, the CEO shall report said action at the next meeting of the Governing Board.

D. ~~2.8.1.~~ **Delegation of Powers and Duties.** ~~The~~ Except as otherwise provided in these Administrative Rules (including, for example, the limitation on the Chief Executive Officer's ability to delegate his or her authority to approve and execute Contracts as set forth in Administrative Rule 4), the Chief Executive Officer is authorized to delegate the powers and duties conferred on him or her under these Administrative Rules as necessary and practical to carry out the day-to-day management of the Authority. The foregoing notwithstanding, ~~provided that~~ the Chief Executive Officer shall remain directly accountable to the Governing Board with respect to the exercise of all such powers and duties; regardless of whether ~~or not so~~ such powers have been delegated.

2.9.2 **Other Senior Officers.** In the absence of the Chief Executive Officer, the Governing Board may designate one or more other Senior Officers to act as the Chief Executive Officer on the terms set forth by the Governing Board. In the event of Financially Exigent Situations, the Chairman may designate one or more Senior Officers to carry out the duties of the Chief Executive Officer on terms so directed by the Chairman, and until the Governing Board can meet to make a selection.

2.10. ~~Section 2.9.~~ **Authority Offices.** The main office of the Authority shall be located at 445 North Garland Avenue, Orlando, Florida, or such other reasonably accessible location, within the boundaries of the Authority, as the Governing Board shall designate from time to time.

2.11. ~~Section 2.10.~~ **Official Seal of Authority.** The seal on file with the ~~Clerk~~ clerk to the Governing Board ~~as the official seal~~ is hereby adopted as the Authority's official seal pursuant to the Act. The Chairman, Vice Chairman, Chief Executive Officer, Secretary and Clerk to the Governing Board are hereby authorized to apply the official seal to resolutions, contracts and other instruments of legal import. Notwithstanding the foregoing, the application of the official seal shall not be a condition to the legal effectiveness of any resolution, contract or other instrument of legal import. The Chairman and other Members of the Governing Board and the Chief Executive Officer are each hereby authorized to use or display the official seal as a symbol of the Authority.

2.12. **Authorization to Establish Committees.** The Governing Board, by resolution adopted by a Majority of the Members, may create one or more committees which may exercise such powers as shall be conferred or authorized by the resolution creating said committee or committees. The composition of any committee, the removal of committee members, and the filling of vacancies shall be determined

by the Governing Board. No committee may exercise any authority which is required by applicable law to be exercised solely by the Governing Board.

2.12.1 **Establishment of Oversight and Audit Committee; Purpose.** A committee of the Governing Board is hereby established, to be known as the “**Oversight and Audit Committee.**” The Oversight and Audit Committee’s primary functions are: (i) to assist the Governing Board in fulfilling its oversight responsibilities by reviewing the financial information, systems of internal controls which the Authority’s staff has established, and the audit process, and (ii) to serve as a workshop to review and discuss matters prior to the Governing Board taking official action on such matters. In carrying out its primary functions, it is the responsibility of the Oversight and Audit Committee to provide an open avenue of communication between the Governing Board, the Authority’s staff and the Authority’s external auditors. The Oversight and Audit Committee is provided specific authority to make recommendations to the Chief Financial Officer, the Chief Executive Officer and the Governing Board with respect to matters that come before it.

- A. **Composition.** The Oversight and Audit Committee shall consist of five members, consisting of the five Members of the Governing Board. In the event a member of the Oversight and Audit Committee is unable to attend a meeting, for any reason, such member may designate any person from his or her organization to attend the meeting and exercise all of the powers of the Oversight and Audit Committee member in his or her absence. The duration of any designation shall be for such period of time as is determined by the Oversight and Audit Committee member making the designation.
- B. **Meeting Schedule and Notice.** The Oversight and Audit Committee shall annually establish a schedule for meetings of the Oversight and Audit Committee. The Oversight and Audit Committee shall meet at the offices of the Authority, or at such other location within the jurisdiction serviced by the Authority. All meetings of the Oversight and Audit Committee except as may otherwise be provided herein below and in accordance with applicable law shall be duly scheduled, subject to public notice and open to the public, to the extent required by, and in accordance with, Florida law.
- C. **Quorum.** The presence in person of a majority of the members present of the Oversight and Audit Committee shall constitute a quorum for the transaction of business.
- D. **Committee Action.** If a quorum is present, the affirmative vote of a majority of the members present of the Oversight and Audit

Committee at a meeting shall constitute an act of the Oversight and Audit Committee.

E. **Chair.** All meetings of the Oversight and Audit Committee must be chaired by the Chairman of the Governing Board. In his or her absence (whether or not he or she designates someone to attend in his or her absence), all meetings shall be chaired by the Vice Chairman of the Governing Board.

F. **Responsibilities.** The Oversight and Audit Committee shall carry out such responsibilities as are assigned to it by the Governing Board and take such actions as it deems appropriate within the scope of its primary responsibilities. In addition, the Oversight and Audit Committee shall (subject to the direction of the Governing Board):

1. **General.**

a. Make recommendations to the Governing Board on matters being considered by the Governing Board as the Oversight and Audit Committee may deem appropriate.

b. Conduct or authorize investigations (as it deems appropriate) into any matters within the Oversight and Audit Committee's scope of responsibilities. The Oversight and Audit Committee shall have unrestricted access to members of the Authority's staff and relevant information. The Oversight and Audit Committee may retain independent counsel, accountants or others to assist in the conduct of any investigation. Operating budget reserves may be used for investigative costs if necessary.

2. **Internal Controls and Risk Assessment.**

a. Review and evaluate the effectiveness of the Authority's process for assessing significant risks or exposures and the steps the Authority's staff has taken to monitor and control such risks to the Authority. The Oversight and Audit Committee shall review any significant findings and recommendations of the Authority's external auditors together with the Authority's staff's responses including the timetable for implementation of recommendations to correct any weakness in internal controls.

b. Receive annual information from the Authority's external auditors regarding their independence, and if so determined by the Oversight and Audit Committee, recommend that the Authority takes appropriate actions to satisfy itself of the Authority's external auditor's independence.

3. **Internal Audit.**

a. Confirm and assure the independence and adequacy of resources for internal audit services.

b. Review the annual internal audit plan and the focus on risk.

c. Consider and review with the Authority's staff:

(i) Significant findings and the Authority's staff's response including the timetable for implementation to correct weaknesses.

(ii) Any difficulties encountered in the course of an audit such as restrictions on the scope of work or access to information.

4. **Compliance with Laws, Regulations, and Code of Conduct.** Determine and make recommendations to the Governing Board as to whether the Authority is in compliance with pertinent laws and regulations, is conducting its affairs in accordance with the Code of Ethics set forth in Administrative Rule 5, and is maintaining effective controls against conflicts of interest and fraud.

5. **Financial Reporting.** Review with the Authority's staff and the Authority's external auditors at the completion of the annual examination:

a. Communications from the Authority's external auditors in the audit planning process that are required by Government Auditing Standards.

b. The annual financial statements and related footnotes.

c. The Authority's external auditors' audit of the financial statements and their report.

d. Management's Certification of the financial statements.

- e. Any significant changes required in the audit plan.
- f. Any difficulties or disputes with the Authority's staff encountered during the audit.
- g. The organization's accounting principles.
- h. Other matters related to conduct that should be communicated to the Oversight and Audit Committee in accordance with Government Auditing Standards #61.
- i. Review with the Authority's staff, the Authority's financial performance on a regular basis.

6. External Auditor.

- a. Recommend to the Governing Board the Authority's external auditors to be appointed and the related compensation.
- b. Review and approve the discharge of the Authority's external auditors.
- c. Review the scope and approach of the annual audit with the Authority's external auditors.
- d. Approval all non-audit services provided by the Authority's external auditors.

ADMINISTRATIVE RULE 4
PROCUREMENT AND CONTRACT ADMINISTRATION

DATE: ~~January 22, 2009~~ January 22, 2010 (NOTE: This Rule was ~~modified and~~ amended and restated in its entirety by the Governing Board at this Meeting).

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.** ~~In addition to the other~~ Capitalized terms not otherwise defined ~~in the Administrative Rules, the following terms~~ herein shall have the ~~following~~ meanings: provided for such terms as set forth in Administrative Rule 1.

~~[The following definition in 4.1.1 was added by the Board at its meeting on January 22, 2009.]~~

~~4.1.1 **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. Such a Advertising Contract includes Bus Advertising Contracts.~~

~~4.1.2 **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.~~

~~4.1.3 **Bidder** means a Vendor who has submitted a Bid to the Authority.~~

~~4.1.4 **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 these 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.

- ~~4.1.5 **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.~~
- ~~4.1.6 **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.~~
- ~~4.1.7 **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.~~
- ~~4.1.8 **Chief Administrative Officer** or **CAO** means the officer responsible for the administrative management of the Authority. If there is not a person serving as the CAO or the CAO position is not implemented, then, in that event, either the Chairman of the Board or the Chief Executive Officer may designate another officer of the Authority to assume the responsibilities and exercise the powers of the Chief Administrative Officer.~~
- ~~4.1.9 **Chief Financial Officer (CFO)** means the officer responsible for the financial management of the Authority, and is designated as such. If there is not a person serving as the CFO or the CFO position is not implemented, then, in that event, either the Chairman of the Board or the Chief Executive Officer may designate another officer of the Authority to assume the responsibilities and exercise the powers of the Chief Financial Officer.~~
- ~~4.1.10 **Chief Of Staff** means the officer responsible for the financial management of the Authority, and is designated as such. If there is not a person serving as the Chief of Staff or the Chief of Staff position is not implemented, then, in that event, either the Chairman of the Board or the Chief Executive Officer may designate another officer of the Authority to assume the responsibilities and exercise the powers of the Chief of Staff.~~
- ~~4.1.11 **Chief Operating Officer (COO)** means the officer responsible for the general operations of the Authority, and is designated as such. If there is not a person serving as the COO or the COO position is not implemented, then, in that event, either the Chairman of the Board or the Chief Executive Officer may designate another officer of the Authority to assume the responsibilities and exercise the powers of the Chief Operating Officer.~~
- ~~4.1.12 **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.~~

~~4.1.13 **Contractor** means any Vendor having a Contract with the Authority.~~

~~4.1.14 **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 hereof.~~

~~4.1.15 **Direct Pay** means a check request submitted to the Finance Department of the Authority for purchases of items defined in this Administrative Rule, and items below the threshold as defined in the Finance Policy and Procedure.~~

~~4.1.16 **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.~~

~~4.1.17 **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 hereof.~~

~~4.1.18 **FDOT** shall mean the Florida Department of Transportation.~~

~~4.1.19 **FTA** shall mean the Federal Transit Administration.~~

~~4.1.20 **Finance Policy and Procedure** means the policy and procedure established from time to time by the Finance Department of the Authority.~~

~~**[The following definition in 4.1.21 was added by the Board at its meeting on January 22, 2009.]**~~

~~4.1.21 **Financially Exigent Agreement** means an agreement entered into or renewed in accordance with Section 4.4.13.~~

~~[The following definition in 4.1.22 was added by the Board at its meeting on January 22, 2009.]~~

~~4.1.22 **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.~~

~~4.1.23 **Fuel Contract** means a Contract pursuant to which the Authority purchases fuel for its ongoing operations.~~

~~4.1.24 **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.~~

~~4.1.25 **Major Contract** shall mean any Contract other than a Minor Contract. Specifically, by way of illustration, a Major Contract also 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.~~

~~4.1.26 **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 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.~~

~~4.1.27 **Micropurchase(s)** means a Simplified Acquisition Procurement that is for \$2,500.00 or less that meets the requirements set forth in Subsection 4.6.6 hereof. The foregoing amount of \$2,500.00 is the amount set forth in applicable Federal guidelines for procurement 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.~~

~~4.1.28 **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.~~

~~4.1.29 **Piggybacking** or **Piggyback Contract** shall have the meaning set forth in Section 4.3.2(G).~~

- ~~4.1.30 **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.~~
- ~~4.1.31 **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.~~
- ~~4.1.32 **Procurement/Contracts Manager** means any person designated as the Procurement/Contracts Manager by the Chief Executive Officer. The Procurement/Contracts Manager shall be in charge of the Purchasing and Contracts Division and shall be authorized to enter into, execute, administer and make written determination of Contracts on behalf of the Authority pursuant to this Administrative Rule and within the authority granted the Procurement/Contracts Manager under this Administrative Rule.~~
- ~~4.1.33 **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.~~
- ~~4.1.34 **Proposal** or **Response** means a document submitted by and executed by a Vendor to the Authority in response to a Request for Proposals or Request for Information, which if accepted by the Authority would represent a binding obligation to the Vendor.~~
- ~~4.1.35 **Proposer** means a Vendor who has submitted a Proposal to the Authority.~~
- ~~4.1.36 **Purchase Order** means the Authority's document used to authorize a purchase transaction with a Vendor.~~
- ~~4.1.37 **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 hereof.~~
- ~~4.1.38 **Purchasing and Contracts Division** means the applicable department or division of the Authority responsible for the administration of procurements and the procurement process and contracts on behalf of the Authority.~~

- ~~4.1.39 **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.~~
- ~~4.1.40 **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.~~
- ~~4.1.41 **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.~~
- ~~4.1.42 **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.~~
- ~~4.1.43 **Response** shall mean a Proposal.~~
- ~~4.1.44 **Responsible** when used in the con text 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.~~
- ~~4.1.45 **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.~~
- ~~4.1.46 **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.~~
- ~~4.1.47 **Senior Officer** shall mean the 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.~~

~~[The following definition in 4.1.48 was added by the Board at its meeting on January 22, 2009.]~~

~~4.1.48 **Short-Term Bus Service Agreement** means an agreement entered into in accordance with Section 4.4.12.~~

~~4.1.49 **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 hereof. The Simplified Acquisition Procurement may be further subdivided into other parts such as, for example, Micropurchase program or the Purchasing Card Program.~~

~~4.1.50 **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 hereof.~~

~~4.1.51 **Source Evaluation Committee** or **SEC** means that committee established by the Authority (either through the Governing Board, the Purchasing and Contracts Division, or otherwise) that evaluates, ranks and selects Bidders to whom Contracts will be awarded in accordance with the Authority's Procurement procedures.~~

~~4.1.52 **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 this Administrative Rule.~~

~~[The following definition in 4.1.53 was added by the Board at its meeting on January 22, 2009.]~~

~~4.1.53 **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.~~

~~4.1.54 **Vendor** means an actual or potential supplier of a good and/or service to the Authority.~~

~~4.1.55 **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.~~

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) ~~to~~ provide safeguards for maintaining a structured procurement system of quality and integrity.

- 4.2.2 **Applicability.** This Administrative Rule shall apply to Procurements and Contracts by the Authority and the administration of all 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 ~~any applicable~~all Federal and~~/or State~~ state regulations ~~which~~that apply to ~~that~~the particular Procurement. The Authority (either through ~~the~~its Governing Board or ~~the~~its Chief Executive Officer) may modify Authority procedures including provisions of this Administrative Rule in order to comply with procedures for ~~State~~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~~state law.
- 4.2.4 **Discretion/Waiver Right of Authority.** Any determination to be made under this Administrative Rule may be made by the Authority (meaning the Governing Board in its discretion). The SEC, any Senior Officer or the Procurement/Contracts Manager may also make such determination in its or his/her discretion but only as to minor and non-material items (any material or substantive changes will need to be made by the Governing Board). In addition, the Authority shall have the right in its discretion to modify or waive any of these Rules with respect to any particular Procurement or in regard to any proposal/ability to award and approve Contracts.
- 4.2.5 **Purchasing and Contracts Division.** The Purchasing and Contracts Division 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 local governmental jurisdiction such as Orange County, City of Orlando, Orange County School Board, etc.
- H. Blanket Purchase Orders.
- I. Items purchased for resale to the general public.

- J. Micropurchases.
- 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 ~~Agreement~~Agreements.
- R. Other methods of ~~procurement~~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 ~~procurement~~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 an IFB or an RFP.
Below \$50,000.00 <u>or less</u> , but above \$2,500.00	Generally a Request for Quotation which would require two or more quotes which could be done by phone, email, etc.
\$2,500.00 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 <u>in the opinion of the Authority</u> .

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 Procurement/Contracts Manager. 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 Purchasing and Contracts Division must have the appropriate documentation proving at least one of the following:
 - 1. The item is available only from a single 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 <u>Contract</u> 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 <u>Contract</u> to delegate authority.	<p>Any<u>The Chairman as well as any Senior Officer (which would include CEO).</u> The Governing Board in approving the Contract, can further delegate or restrict authority as to who can execute the Contract.</p> <p><u>NOTE: Thus, once the Governing Board has approved the Contract, it can be executed by any Senior Officer (in addition to the Chairman), 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.</u></p> <p><u>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, provided, however, if such action either (i)</u></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>
					<u>varies materially from the approval, or (ii) is not materially adverse to the Authority, then further approval by the Governing Board is required.</u>
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. <u>NOTE: Thus, if the Governing Board does not specifically authorize staff to exercise options, options must come back to the Governing Board for approval.</u>	CEO, provided: a) such option was contained in the original approved contract <u>Contract</u> and clearly described in the printed agenda of the Governing Board for that meeting; and b) Governing Board <u>in the original approval</u> authorized the renewal of the option <u>by the CEO</u> 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.
		NOTE: Thus, if the Governing Board does not specifically authorize staff to exercise options, options must come back to the Governing Board for approval.			

	<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 <u>Contract</u>, the value of all options is included.</p> <p>Any contract <u>Minor Contract</u> 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 to approve said minor contract <u>Minor Contract</u> to:</p> <p>a) <u>CAO or CFO if Contract has a value of \$150,000 or less.</u></p> <p>b) <u>any</u> other Senior Officer if Contract has a value of \$50,000 or less.</p> <p>bc) Procurement/ Contracts Manager if Contract has a value of \$25,000 or less.</p> <p>ed) Contract Administrators/ Buyers if Contract has a value of \$5,000 or less.</p> <p>ee) To other LYNX <u>Authority</u> employees for micropurchases <u>Micropurchases</u> of \$2,500 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 <u>Contracts</u> – contract <u>Contract</u> does not exceed \$180,000 in the aggregate and the term does not exceed 12 months.</p> <p>b) Level 2 contracts <u>Contracts</u> – Contract exceeds <u>Contract exceeds</u> \$180,000 but <u>is</u> less than \$300,000 <u>300,000</u>, or less, or having it has a term greater than 12 months.</p> <p>c) Level 3 contracts <u>Contracts</u> – all other bus</p>	<p>a) CEO or CFO.</p> <p>b) CEO provided that the contract <u>Contract</u> 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 <u>Contract</u> 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) 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 Contract.</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>advertising contracts Bus Advertising Contracts.</p> <p>NOTE: A summary of new advertising contracts 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>				
5	<p>Emergency Purchases</p> <p>NOTE: Any such contracts Contracts shall be reported to the Governing Board 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</p>	4.4.7	<p>a) For amounts of \$150,000 or less, the CEO may delegate to any Senior Officer.</p> <p>b) CEO may not delegate amounts in excess of \$150,000, which amounts will be approvable by the CEO, the Chairman of the Board, or in his/her absence, to the Vice Chairman to approve Emergency Purchases</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 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>
		<p>authority to approve and execute the Contract.</p> <p>c) Authority is also provided to the 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.</p>			
6	Fuel Purchases	<p>a) Governing Board Approval is required for any <u>to approve authorized vendors to sell fuel to the Authority.</u> This would be through a competitive solicitation. However, in <u>bidding process.</u> In said approval, the Governing Board can establish the conditions for approval of that contract <u>the actual purchases of fuel</u> by the CEO or other persons to accept fuel bids and execute fuel contracts. <u>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.</u></p>	4.4.9	<u>a)</u> CEO	<u>a)</u> CEO

	<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: Any fuel purchases under this Rule would be reported to the Governing Board at its next scheduled meeting as an information item.</p> <p><u>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.</u></p> <p>NOTE: The Governing Board would generally establish guidelines</p>	<p><u>Any such authority must be set forth in either the Governing Board Resolution or in the Administrative Rules.</u></p> <p>b) If LYNX has an opportunity to acquire fuel at a savings of 5% or more over its existing fuel contract, and that is permitted under the existing fuel contract, (i.e. the existing fuel contract is not on an exclusive basis) then the CEO would have the ability to acquire such other fuel at such a savings or more and for a term not longer than the term of the other fuel contract, including options. <u>In the event the Authority wishes to purchase fuel under an approved contract based on OPIS 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.</u></p> <p><u>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</u></p>		<p><u>b) CEO may delegate for purchases under the OPIS contract authority to do so to any other Senior Officer or the Procurement/Contracts Manager, within the seven-day limitation.</u></p> <p><u>CEO</u> c) No</p>	<p><u>b) CEO, or Senior Officer or Procurement/Contracts Manager if delegated authority is given.</u></p> <p><u>c) CEO</u></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>
	for fuel purchases every two years.	<u>Authority's budget for fuel for the period to which the purchase relates.</u>			
7.	Short-Term Bus Service Agreement NOTE: Any such agreement shall be reported to the Governing Board at its next scheduled meeting.	CEO if the dollar value of the agreement does not exceed \$500,000. Chairman of the Board if the dollar value of the agreement exceeds \$500,000.	4.4.12	Yes.	CEO or its designee.
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	No <u>Yes, by the Chairman of the Governing Board.</u>	CEO <u>or by any Senior Officer if so designated by the Chairman.</u>

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, the CEO or any other Senior Officer, 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, any Senior Officer (which would include the CEO) 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~~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>
\$50,000 <u>150,000</u> or less	CFO and/or CAO
<u>50,000 or less</u>	<u>Any Senior Officer</u>
25,000 or less	Procurement/Contracts Manager
5,000 or less	Contract Administrator/Buyers
2,500 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.

~~[The following Section 4.4.6 was amended/modified by the Board at its meeting on January 22, 2009 to relabel the Section, add a new Section 4.4.6B.]~~

- 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 each of the Chief Executive Officer, Chief Administration Officer and the Chief Financial 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.
 - 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.

~~The following Section 4.4.6B was added by the Board at its meeting on January 22, 2009.~~

- 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. ~~A.~~ **Level 1 Contracts.** The Governing Board hereby delegates to each of the Chief Executive Officer, Chief Administration Officer and the Chief Financial 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.

H. ~~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, 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. ~~C.~~ **Level 3 Contracts.** All other Advertising Contracts shall require and be reviewed by Authority general counsel and approved by the Governing Board.

J. ~~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 Advertising Contracts shall be artificially divided so as to fall within Level 1 or Level 2 thresholds.

K. ~~E.~~ **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. ~~F.~~ **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.

~~[The following Section 4.4.6C was relabeled and modified to apply to all Advertising Contracts by the Board at its meeting on January 22, 2009.]~~

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. 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.
- B. 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.
- C. The authority provided under these Administrative Rules to address any emergency shall apply during the term of the Emergency.
- D. Documentation of any such Emergency shall be maintained by the Procurement/Contracts Manager, and shall be reported to the Governing Board at its next scheduled meeting 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 ~~a widely varying process that 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 Procurement/Contracts Manager 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 ~~establish~~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. ~~Generally speaking, the Governing Board may authorize the process by which fuel will be acquired for each two year period which will generally authorize the Chief Executive Officer to establish the terms and conditions of the competitive bidding process and for the Chief Executive Officer to award and execute the contract.~~
- C. ~~Recognizing that fuel contracts will vary from time to time, if an opportunity is presented to the Authority that would provide for a savings in fuel costs of 5% or more, the CEO is authorized subject to permitted contract requirements to purchase and enter into contracts to acquire such other fuel.~~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).
- ~~D. Fuel contracts purchased through the procedure not involving final Governing Board Authority shall be reported to the Governing Board at its next scheduled meeting as a discussion item.~~

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 \$2,500.00 (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 \$2,500.00 (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. 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 \$2,500.00 (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 Purchasing and Contracts Division 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.

~~The following Section 4.4.12 was added by the Board at its meeting on January 22, 2009.~~

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.

~~[The following Section 4.4.13 was added by the Board at its meeting on January 22, 2009.]~~

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 ~~regularly scheduled meeting~~ 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 ~~LYNX~~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 date of approval by the Governing Board, if applicable, and~~ 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 Purchasing and Contracts Division 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 and 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 ~~**Bid, Requests**~~**Invitation for Quote, or Bid versus Request for Proposal Purchases.** ~~Decisions to utilize.~~ The decision as to whether to use an IFB or RFP for a particular Procurement ~~may be made by the Procurement/Contracts Manager, subject to the overriding decision~~ shall be made by either the Procurement/Contracts Manager or the Chief Executive Officer. Any decision made by the Procurement/Contracts Manager may be overridden by the Chief Executive Officer. ~~The Governing Board shall approve the issuance and award of all RFP's or IFB's over \$150,000.00. All pre-planned Procurements that are specifically identified in the annual budget approved by the Governing Board shall not require Governing Board approval for issuance of an RFP.~~ The Procurement/Contracts Manager 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 ~~the~~ a Procurement ~~of items where~~ 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. ~~It is determined to be in the Authority's best interest utilizing the IFB process.~~ The Procurement/Contracts Manager and/or the Chief

Executive Officer determines that the IFB process best serves the Authority's interests.

- B. Competitive bidding through a Request for Proposal is appropriate when the exact product or service needed by the Authority is not specifically predetermined. ~~RFP's~~RFPs shall provide a statement of need or service description for achieving a described goal of the Authority, which proposed solutions are sought. ~~RFP's~~RFPs may include specifications, scope of services, and proposed contractual terms and conditions to which a Proposer must respond. ~~RFP's~~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 IFP 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 IFP.

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

4.6.3 ~~C.~~ **The Bid/Proposal Process.** The IFB and RFP process is as follows:

- A. ~~1.~~ The specific department manager shall identify the desired Procurement and shall submit a written request to the Procurement/Contracts Manager. All specifications, budget information and relevant information shall be included.
- B. ~~2.~~ The Purchasing and Contracts Division shall put the Procurement request into the proper form and complete the legal advertisement and Bid/contractual documents.
- C. ~~3.~~ The Purchasing and Contracts Division and the requesting department will then jointly develop the specifications and award criteria.

- D. ~~4.~~ 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.
- E. Subject to any conditions imposed by the Governing Board, the Purchasing and Contracts Division may form a SEC in order to evaluate Bids or Proposals and to make recommendations as to whether and to whom a Contract should be awarded based upon such Bids or Proposals. The Purchasing and Contracts Division may appoint such individuals (within or without the Authority) to be a member of a SEC, including the Chief Executive Officer and the Chief Financial Officer, however, the Chief Executive Officer and the Chief Financial Officer may not both be a member of any SEC at the same time.
- F. ~~5.~~ The ~~Authority shall evaluate Bid/~~evaluation of all Bids and Proposals shall be based on the requirements set forth in the Invitation to Bid/Request for Proposal. Award criteria shall be objectively measurable.

4.6.4 ~~4.6.2~~ **Process for Award of Bid:**

- A. If the Contract is to be awarded on the basis of price, the Contract may be awarded to the Responsible and Responsive Bidder who submits the lowest Bid price. The Contract shall be awarded with reasonable promptness by means of a written notice to such Bidder. The Authority shall at all times, except when expressly waived, reserve the right to reject all Bids or to elect not to proceed.
- B. When it is impractical initially to prepare a purchase description to support an award based on price, the Authority may conduct multistep sealed bidding, whereby an initial RFP or Invitation for Bids/advertisement is issued requesting the submission of unpriced offers, or information relating to the experience and capabilities of the prospective Bidders, to be followed by an RFP or an Invitation for Bid/advertisement limited to those Proposers whose offers or experience and capabilities have been determined to be acceptable under the criteria set forth in the initial RFP or invitation for Bids/advertisement.
- C. 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.

D. Recommendation Status for Bids:

1. Staff shall recommend award to the responsive and qualified Proposer whose Proposal is determined to be the most advantageous to the Authority. In the event only one responsive Proposal is received, the Authority reserves the right to award to the sole Proposer, readvertise the Request for Proposal, with or without making changes to the evaluation factors, or elect not to proceed.
2. A Proposer may be determined non-Responsible or non-Responsive for failing to meet the requirements of any RFP, 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 Proposer to promptly supply information in connection with an inquiry may be grounds for a determination that the Proposer is non-Responsible or non-Responsive with respect to a Procurement.

E. 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.

4.6.5 ~~4.6.3~~ **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 ~~shall~~may be obtained pursuant to the process for Simplified Acquisition Procurements in Subsection ~~4.6.5~~-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

4.6.6 ~~4.6.4~~ **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**”) ~~or to 40 U.S.C. 541,~~ such Procurement shall be conducted in accordance with such provisions of such law.

4.6.7 ~~4.6.5~~ **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.

4.6.8 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. **Contact with Authority/No Solicitation or Contract During Procurement Process.**

- 4.7.1 Prior to the due date for submittal of a competitive sealed Proposal or Bid, with regard to all Invitations to Bid, Requests for Proposals, and all other award of Procurements pending before the Authority, contact by any interested party or representative thereof with any Member to discuss such matter is permitted. Subsequent to the submittal by a Proposer, such Proposer is prohibited from contacting or discussing the Procurement with any Member or Officer of the Authority. **Provided, however,** all inquiries regarding the official position of the Authority in regard to such matters, including questions about the Procurement process or the terms and conditions of a Procurement, shall be made through the Procurement/Contracts Manager and Authority staff expressly designated with the responsibility of administering the Procurement and in accordance with this Administrative Rule.
- 4.7.2 On or after the due date for submittal of a competitive sealed Proposal or Bid, with regard to all Invitations to Bid, Requests for Proposals, and all other awards of Procurements pending before the Authority, and all protests of all procedures with respect thereto, and any contract claims or disputes subject to the application of this Administrative Rule, contact by any interested party or representative thereof with any Member, officer, employee or agent of the Authority to attempt to influence the outcome thereof is strictly prohibited, except as authorized under this Subsection. All inquiries regarding such matters shall be made through the Procurement/Contracts Manager and other Authority staff expressly designated with the responsibility of administering the Procurement and contract administration process and in accordance with Administrative Rule.
- 4.7.3 The Governing Board may impose sanctions upon any interested party or representative thereof who, itself or through its representatives, is found to have violated the provision of this Section ~~4.9~~4.7, which may include Suspension or Debarment.
- 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 Purchasing and Contracts Division 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 Governing Board may require a Bidder or Contractor to furnish bid bonds, performance bonds and/or payment bonds in amounts determined by the Governing Board.
- 4.12. **Geographic Preferences.** Procurements made subject to FTA restrictions will be conducted in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of Bids or Proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preferences. Procurements made subject to Consultants Competitive Negotiation Act, ~~as set forth in the Florida Statutes, § 287.055 ("CCNA")~~, may include, subject to the approval of the Governing Board, geographic preference for architectural and engineering services, 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.** Those parties involved in contract administration shall comply with the FTA Circular 4220.1E, Third Party Contracting Requirements as may be amended, supplemented, updated or replaced from time to time, or any other applicable FTA rule or policy for all procurements using Federal funds. 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; 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 Procurement/Contracts Manager 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 [F.S. Florida Statutes § 287.133](#), or any successor provision, shall not be able to transact business with the Authority to the extent specified in [F.S. Florida Statutes § 287.133 \(3\) \(a\)](#).

~~4.14.6 **Procedure for Protest of Awards by Authority.** This Subsection provides a procedure for a resolution of protests arising from the Procurement process. Contracts not subject to formal invitation to bid (including micropurchases and Minor Contracts), RFP or Contracts awarded pursuant to an emergency declaration or other emergency procedures are not subject to this Subsection. The Authority reserves the right to waive any minor informalities or irregularities, which do not go to the heart of the Procurement or prejudice other Bidders or Proposers and/or to reject any and all Bids or Proposals submitted in response to any Invitation to Bid or Request for Proposals. Conditional Bids or Proposals or those that take exception to the specifications may be considered non-responsive~~

~~and may be rejected by the Procurement/Contracts Manager. The protest process shall be as follows:~~

- ~~A. — Any actual Bidder or Proposer who is aggrieved in connection with the solicitation or proposed award shall timely protest in writing to the Procurement/Contracts Manager. Vendors that have not so timely submitted a Bid or Proposal on the Procurement, shall not have standing to protest.~~
- ~~B. — The Purchasing and Contracts Division shall Post a recommendation of award. A formal written protest must be filed no later than 5:00 p.m., local time, five (5) business days after the Posting date of the award recommendation. The Bidder or Proposer has the responsibility to contact the Authority and request the award recommendation results. Failure of the Bidder to so contact the Authority shall be grounds for the Authority to reject the protest. The time limits in which protests must be filed as specified herein may be altered by specific provisions in an Invitation to Bid or Request for Proposals. A formal written protest is considered filed with the Authority when it is received by the Procurement/Contracts Manager. Accordingly, a protest is not timely filed unless it is received by the Procurement/Contracts Manager within the times specified herein. Failure to file a formal written protest within the time period specified shall result in waiver of all rights of protest by the protesting party and abrogation of any further Bid protest proceedings.~~
- ~~C. — The formal written protest shall: identify the protesting party and the solicitation involved; include a clear statement of legally sufficient grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protesting party deems applicable to such grounds; and, specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds. The protesting party shall mail a copy of the formal written protest to the recommended awardee and shall provide the Purchasing and Contracts Division with the original letter.~~
- ~~D. — These protest procedures shall be the sole remedy for challenging an award of Procurement. Bidders and Proposers are prohibited from attempts to influence, persuade or promote through any other channels or means. Such attempts may be cause for suspension as herein provided.~~
- ~~E. — With respect to all protest proceedings under this Subsection the judicial rules of evidence shall not apply and the decision shall be based on such information adduced in the course of the proceeding upon which reasonable prudent persons rely on the conduct of their affairs.~~
- ~~F. — Upon receipt of a formal written protest, which has been timely filed, the solicitation or Contract award process shall be suspended until the subject~~

~~of the protest is resolved by final Authority action, unless the Chief Executive Officer makes a determination for the record that the award of a contract, without delay, is necessary to protect substantial interests of the Authority.~~

- ~~G. The Procurement/Contracts Manager shall attempt to settle or resolve the matter, with or without a hearing at the option of the Procurement/Contracts Manager. The Procurement/Contracts Manager shall have the authority to settle and/or render a final written decision within thirty (30) business days from the date of receipt of the protest.~~
- ~~H. The Procurement/Contracts Manger's decision shall be final and conclusive unless within five (5) business days of receipt of the written decision, the protesting party delivers a formal written appeal to the Procurement/Contracts Manager. The written request shall state with specificity the grounds for the appeal and also the action requested.~~
- ~~I. In case of competitive Bids, an appeal committee shall attempt to settle or resolve the matter, with or without a hearing at the option of the appeal committee. The appeal committee shall be comprised of the Chief Administrative Officer, the user department director or designee, and an independent third party within the Authority as appointed by the Chairperson, plus the Procurement/Contracts Manager as a (non-voting) member.~~
- ~~J. In the case of competitive sealed Proposals, the SEC shall attempt to settle or resolve the matter, with or without a hearing at the option of the SEC.~~
- ~~K. The Authority's legal counsel will support the Procurement/Contracts Manager, the appeal committee or SEC, as applicable, in an advisory capacity. The appeal committee or SEC, as applicable shall have the authority to settle and/or render a final written decision within thirty (30) business days from the date of filing the written appeal.~~
- ~~L. Nothing in this Subsection is intended to affect the existing powers of the Governing Board to settle actions pending before the courts.~~
- ~~M. In the event of a court upholding the protesting party's claim, the court awarded damages on behalf of the protesting party shall be solely limited to Bid/Proposal preparation costs, and reimbursement of the amount of the protest bond as stipulated herein.~~

~~[The following paragraph N was added by the Board at its meeting on January 22, 2009.]~~

~~N. The Authority shall notify the FTA of any protests related to procurements involving Federal funds and shall keep the FTA informed of the status of any such protests.~~

~~4.15. **Contract Claims.** All claims by a Contractor against the Authority relating to a Contract shall be submitted in writing to the Procurement/Contracts Manager for a decision. Claims include, without limitation, controversies arising under a Contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The process for contract claims is as follows:~~

~~4.15.1 The decision of the Procurement/Contracts Manager shall be issued in writing, and shall be mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.~~

~~4.15.2 The Procurement/Contracts Manager's decision shall be final and conclusive unless, within five (5) business days from the date of receipt of the decision, the contractor delivers a written appeal to the Division of Purchasing and Contracts.~~

~~4.15.3 The Procurement/Contracts Manager, with review from legal counsel, shall issue a written decision regarding any contract controversy within fifteen (15) business days after written request for a final decision, or within such longer period as may be agreed upon between the parties.~~

~~4.15.4 Notwithstanding the foregoing, any decision to pay a claim that would result in payment to a Contractor, together with all sums to be paid under the Contract (including other prior, pending or anticipated claims), for Contracts that are subject to the approval of the Governing Board shall require the approval of the Governing Board.~~

~~4.15.5 Any person aggrieved by the decision of the Procurement/Contracts Manager must deliver a written appeal within five (5) business days of receipt of the written decision to the Procurement/Contracts Manager. An appeal committee, comprised of the Chief Administrative Officer as Chairperson and the user Department Director or designee, an independent third party within the Authority as appointed by the Chairperson, plus the Procurement/Contracts Manager as a (non voting) member shall have the authority to settle the protest and/or render a final written decision. Legal counsel will support the appeal committee in an advisory capacity. The appeal committee shall conduct a hearing where the aggrieved person shall be given the opportunity to show why the decision of the Procurement/Contracts Manager should be modified. The appeal committee shall render a final written decision within fifteen (15) business days from the date of the written notice of appeal. If no decision is rendered within this time frame then it will be presumed that the appeal committee concurs with the Procurement/Contracts Manager's decision and the decision of the Procurement/Contracts Manager shall be the final and conclusive administrative action.~~

~~4.16. **Administrative Remedies.** By submission of a Bid, Proposal, offer, or quotation a Bidder or Offeror agrees to exhaust its administrative remedies under Authority rules or procedures or the dispute clause of any Contract prior to seeking judicial relief of any type in connection with any matter related to the solicitation, and award of any Contract, and any dispute under any Contract.~~

4.15. ~~4.17.~~ **Remedies for Solicitations or Awards in Violation of Law.**

4.15.1 ~~4.17.1~~ If, prior to Bid or Proposal opening or the closing date for receipt of Proposals, the Procurement/Contracts Manager, 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 ~~4.17.2~~ If, after Bid or Proposal opening or the closing date for receipt of Proposals, the Procurement/Contracts Manager, 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 ~~4.17.3~~ If, after an award, the Procurement/Contracts Manager, 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. ~~4.18.~~ **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 ~~4.18.1~~—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 ~~4.18.2~~—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 ~~4.18.3~~—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 ~~4.18.4~~—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.

~~6.1.6 “Procurement Protest Procedure” means the procedure described in Section 6.3 for resolving protests arising from the Procurement process.~~

~~6.1.7 “Protesting Party” means any Bidder or Proposer who is protesting or desires to protest a Procurement. Any person desiring to protest a Procurement must have actually submitted a Bid or Proposal in connection with the particular Procurement in order to have standing to protest it.~~

A. To set forth procedures for the resolution of disputes related to the Authority’s Procurement process;

B. To set forth procedures for the resolution of disputes related to Contracts to which the Authority is a party; and

C. To set forth rules that apply to all other disputes involving the Authority, including tort claims and workers’ compensation claims.

6.2 Application. The provisions of Section 6.3 shall apply to all disputes. All disputes that relate to the Authority’s Procurement process shall be resolved in accordance with the applicable process set forth in Section 6.4. All disputes that relate to Contracts with the Authority shall be resolved in accordance with the process set forth in Section 6.5. The provisions of Section 6.6 shall apply to the settlement of all claims (other than those addressed by Section 6.5), including those involving workers’ compensation and tort claims.

6.3 General Provisions Applicable to All Disputes. The following provisions shall apply to all disputes, regardless of whether such disputes relate to the Authority’s Procurement process, Contracts with the Authority, or any other claims:

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 9th 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.

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

LYNX Central Station
455 North Garland Avenue
Orlando, Florida 32801
Attention: Procurement/Contracts Manager

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.

[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 Procurement/Contracts Manager 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.

~~6.1.8 “Waiver” means, in respect to any Protesting Party or any Contractor, Failure to comply with each of the requirements in the applicable procedure shall result in~~ a waiver of all further protest rights, including a waiver of any and all liabilities, actions, charges, causes of action, demands, damages, claims for relief, and all costs and expenses (including attorneys’ fees and costs) arising from the matter which is the subject of the dispute (collectively, a “Waiver”). Any Bidder or Proposer protesting the Procurement ~~Protest process or the Contract Dispute, as the case may be, any award of a Contract thereunder is referred to in this Rule as a “Protesting Party.”~~

~~6.2 General Provisions:~~

~~6.2.1 Establishment, Scope, and Purpose. The Governing Board has established this Administrative Rule governing the resolution of disputes. The purpose of this Administrative Rule is to set forth rules and processes for resolving disputes involving the Authority.~~

~~6.2.2 Applicability. This Administrative Rule shall apply to all disputes involving the Procurement Process and any Contract, and shall also apply to the settlement of all disputes involving the Authority, including, without limitation, disputes involving Contracts, torts, and workers’ compensation.~~

~~6.3 Procedure for Procurement Protests. All protests arising from the Procurement process shall be resolved in accordance with the following Procurement Protest Procedure. The Procurement Protest Procedure is the sole remedy for challenging an award of Procurement. The Procurement Protest Procedure shall apply to all Procurements other than those which are not subject to the competitive bidding process. The Procurement Protest Procedure shall not apply to any controversy or claim which is subject to the dispute resolution procedure set forth in Section 6.4. The Procurement Protest Procedure is as follows:~~

SECTION 6.4.1:

THE PROCEDURE SET FORTH IN THIS SECTION 6.4.1 SHALL APPLY WHEN: (1) ONLY THE PROCUREMENT/CONTRACTS MANAGER 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 Procurement/Contracts Manager 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. ~~6.3.1 Step 1 – Procurement/Contracts Manager.~~ Step 1 – Procurement/Contracts Manager. The initial arbiter of any dispute which is subject to this procedure shall be the Procurement/Contracts Manager. The process by which disputes shall be resolved by the Procurement/Contracts Manager is as follows:

~~A. Procurement Protest.~~ Any Protesting Party desiring to protest a Procurement must file a Procurement Protest with the Procurement/Contracts Manager.

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 Procurement/Contracts Manager. The ~~—aforementioned~~ Procurement Protest must be filed ~~with the Procurement/Contracts Manager~~ before 5:00 p.m. (local time) on the fifth (5th) business day following (i) the posting date of the ~~Purchasing and Procurement/Contracts Division~~ Manager’s recommendation of award. ~~Failure to file a Procurement Protest by such date and time,~~ 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 Procurement/Contracts Manager 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 ~~and an abrogation of any further~~ 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 proceedings. A Procurement Protest is considered filed with the Procurement/Contracts Manager upon receipt.

2. Requirement to Notify Person Awarded Contract. The Protesting Party must mail a copy of the Procurement Protest to the Person who was recommended ~~by the Purchasing and Contracts Division~~ to be awarded the Contract if a recommendation of award ~~has had~~ been made at or before the time the Protesting Party files the Procurement Protest.

~~3. The Protesting Party is responsible for requesting the Purchasing and Contracts Division's recommendation of award. Failure of the Protesting Party to request a copy of same shall not extend the deadline for filing a Procurement Protest with the Procurement/Contracts Manager.~~

3. 4. 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 ~~legal basis~~grounds for the protest;
- ~~c. a request for relief and the legal basis for such relief; and~~
- ~~d. a reference to the statutes, laws, ordinances, or other legal authorities on which the Protesting Party is relying as a basis for his, her or its protest as well as his, her or its request for relief.~~

4. B. 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. ~~1.~~ the resolution of the protest;
- b. ~~2.~~ the exhaustion of all remedies afforded the Protesting Party under this ~~Procurement Protest Procedure (excluding judicial or arbitral remedies); or~~procedure;
- c. ~~3.~~ a determination by the ~~Authority's~~ Chief Executive Officer that the award of the Contract without delay is

reasonably necessary to protect substantial interests of the Authority—; or

d. a determination by the Chief Executive Officer that the Procurement Protest is frivolous in nature.

5. **Hearing.** The Procurement/Contracts Manager may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party 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 Protesting Party to attend and participate in any hearing required by the Procurement/Contracts Manager will result in a Waiver by the Protesting Party.

6. ~~C. **Settlement or Decision by Procurement/Contracts Manager.**~~ Within thirty (30) days of receiving a Procurement Protest, which ~~satisfies the filing and content~~complies with the requirements ~~set forth~~ above, the Procurement/Contracts Manager shall ~~either reach a settlement with the Protesting Party or else~~ render a written decision as to the matters set forth in the Procurement Protest. ~~All settlements shall require the approval of the Governing Board or be approved through delegated authority, as set forth in this Administrative Rule, in order to be valid.~~In the event a hearing is held, the aforementioned deadline shall be tolled until ten (10) business days following the conclusion of the hearing.

7. ~~D. **Appeal Right.**~~ The decision of the Procurement/Contracts Manager shall be final and conclusive unless the Protesting Party appeals the decision in accordance with Section 6.3.26.4.1.B below.

~~6.3.2 Step 2 Procurement Appeal Committee.~~

~~A. **Filing an Appeal.** If the Protesting Party desires to appeal the decision reached by the Procurement/Contracts Manager, the Protesting Party must file a formal written appeal (“**Procurement Appeal**”) with the Procurement/Contracts Manager.~~

~~1. The Procurement Appeal must be filed before 5:00 p.m. (local time) on the fifth (5th) business day following the Protesting Party’s receipt of the decision reached by the Procurement/Contracts Manager. Failure to file a Procurement Appeal by such date and time shall result in a Waiver and an abrogation of any further Procurement protest proceedings. A Procurement Appeal is considered filed with the Procurement/Contracts Manager upon receipt.~~

~~2. The Procurement Appeal must state, with specificity, the grounds for the Procurement Appeal and also the action requested.~~

B. ~~**Procurement Appeal Committee.** Following the timely receipt of a Procurement Appeal, the Authority shall convene an appeal committee (the “**Procurement Appeal Committee**”) which shall consist of those individuals identified below. In addition, the Authority’s legal counsel will support the Procurement Appeal Committee in an advisory capacity.~~ **Step 2 – Chief Financial Officer.** The appeal of any decision of the Procurement/Contracts Manager shall be rendered by the Chief Financial Officer. The process by which appeals shall be rendered by the Chief Financial Officer is as follows:

1. ~~**Request for Bid.** In the event the Procurement which is the subject of the Procurement Protest involves a Request for Bid, the Procurement Appeal Committee shall be comprised of the Chief Administrative Officer (who shall serve as the Chairperson of the Procurement Appeal Committee), the user department director or designee, and an independent third party within the Authority appointed by the Chairperson, as well as the Procurement/Contracts Manager as a non voting member.~~

Procurement Appeal; Deadline for Filing. If the Protesting Party desires to appeal the decision of the Procurement/Contracts Manager, the Protesting Party must file a formal written appeal (“**Procurement Appeal**”) with the Procurement/Contracts Manager 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 Procurement/Contracts Manager 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 Procurement/Contracts Manager upon receipt.

2. ~~**Request for Proposal.** In the event the Procurement which is the subject of the Procurement Protest involves a Request for Proposal, the Procurement Appeal Committee shall be comprised of the members of the SEC for the particular Procurement.~~ **Elements of Procurement Appeal.** The Procurement Appeal must include the following elements:

~~C.~~

a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and

b. a clear explanation why the decision reached by the Procurement/Contracts Manager was incorrect.

3. **Hearing.** The ~~Procurement Appeal Committee~~ [Chief Financial Officer] may, in ~~its~~ this or her sole discretion, ~~shall~~ elect to conduct a hearing at which the Protesting Party will be ~~permitted~~ invited to present evidence to support his, her or its position. ~~[Nothing herein shall be interpreted to require that the Procurement Appeal Committee conduct a hearing.]~~ ~~[Describe the process and procedures to be followed at the hearing.]~~

~~D.~~ ~~Settlement or~~ If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Chief Executive Officer. Failure by the Protesting Party to attend and participate in any hearing required by the Chief Financial Officer will result in a Waiver by the Protesting Party.

4. **Decision by Chief Financial Officer.** Within thirty (30) days of receiving a Procurement Appeal, which satisfies the filing and content requirements set forth above, the ~~Procurement Appeal Committee shall either reach a settlement with the Protesting Party or else~~ Chief Financial Officer shall render a written decision as to the matters set forth in the Procurement Appeal. In the event a hearing is held, the aforementioned deadline shall be tolled until ten (10) business days following the conclusion of the hearing. ~~All settlements shall require the approval of the Governing Board or be approved through delegated authority, as set forth in this Administrative Rule, in order to be valid.~~

~~6.3.3 Step 3 — Arbitration or Judicial Action.~~ ~~If, after exhausting its remedies described in Sections 6.3.1 and 6.3.2, and assuming that it has not caused there to be a Waiver by failing to properly and timely file a Procurement Protest or Procurement Appeal, the Protesting Party may seek to have its Procurement protest resolved by either a court of law or by binding arbitration, subject to the Authority having the sole discretion to determine which forum (i.e., court of law or binding arbitration) is the appropriate forum for resolving the Procurement protest. The Protesting Party shall request in writing a determination from the Authority as to the appropriate forum for finally resolving the Procurement protest following the exhaustion of its remedies described in Sections 6.3.1 and 6.3.2, and the Authority shall provide such determination within five (5) business days of receiving such request.~~

5. **Final Decision.** The decision rendered by the Chief Financial Officer shall be final and binding upon the Protesting Party.

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. ~~**Arbitration.**—If the Authority decides to resolve the Procurement protest by arbitration, such protest shall be decided by arbitration 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.~~ **Step 1 – Procurement/Contracts Manager.** The initial arbiter of any dispute which is subject to this procedure shall be the Source Evaluation Committee. The process by which disputes shall be resolved by the Source Evaluation Committee 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 Procurement/Contracts Manager. 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 Procurement/Contracts Manager upon receipt.

2. **Requirement to Notify Person Awarded Contract.** The Protesting Party must mail a copy of the Procurement Protest to the Person who was recommended to be awarded the Contract.
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.
4. **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 that the award of the Contract without delay is reasonably necessary to protect substantial interests of the Authority;
or
 - d. a determination by the Chief Executive Officer that the Procurement Protest is frivolous in nature.
5. **Hearing.** The Source Evaluation Committee may, in its sole discretion, elect to conduct a hearing at which the Protesting Party 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 Protesting Party to attend and participate in any hearing required by the Source Evaluation Committee will result in a Waiver by the Protesting Party.
6. **Decision by Source Evaluation Committee.** Within thirty (30) days of receiving a Procurement Protest, which complies with the requirements above, the Source Evaluation Committee shall render a written decision as to the matters set forth in the Procurement Protest. In the event a hearing is held, the aforementioned deadline shall be tolled until ten (10) business days following the conclusion of the hearing.

7. **Appeal Right.** The decision of the Source Evaluation Committee shall be final and conclusive unless the Protesting Party appeals the decision in accordance with **Section 6.4.2.B** below.

B. ~~**Judicial Action.**~~ If the Authority decides to resolve the Procurement protest in a court of law, then the following provisions shall be applicable: **Step 2 – Chief Financial Officer.** The appeal of any decision of the Source Evaluation Committee shall be rendered by the Chief Financial Officer. The process by which appeals shall be rendered by the Chief Financial Officer is as follows:

~~(i) **Jurisdiction and Venue.**~~ Any action, suit or proceeding arising in connection with the Procurement protest shall be brought in the exclusive jurisdiction of the 9th Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division, and

~~(ii) **JURY TRIAL WAIVER.**~~ EACH, THE AUTHORITY AND THE PROTESTING PARTY, AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL THEN OR THEREAFTER EXIST WITH REGARD TO THE PROCUREMENT PROTEST, OR ANY CLAIM, 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.

C. ~~**Liquidated Damages.**~~ The Authority and the Protesting Party recognize the difficulty of ascertaining damages to the Protesting Party resulting from its failure to be awarded a particular Procurement. Accordingly, in the event an arbitrator or a court upholds the Protesting Party's claim, the arbitrator or court awarded damages on behalf of the Protesting Party shall be solely limited to Bid/Proposal preparation costs, and reimbursement of the amount of any protest bond provided.

~~6.3.4 **Procurement Protest Chart.**~~ The following chart summarizes the process for resolving Procurement protests. In the event there is a conflict between the information contained in the following chart and the provisions of Sections 6.3.1–6.3.3, the provisions of Sections 6.3.1–6.3.3 shall control.

1. **Procurement Appeal; Deadline for Filing.** If the Protesting Party desires to appeal the decision of the Source Evaluation Committee, the Protesting Party must file a Procurement Appeal

with the Procurement/Contracts Manager. The Procurement Appeal must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the date the Source Evaluation Committee 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 Procurement/Contracts Manager 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 why the decision reached by the Source Evaluation Committee was incorrect.
3. **Hearing.** The Chief Financial Officer may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party 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 Protesting Party to attend and participate in any hearing required by the Chief Financial Officer will result in a Waiver by the Protesting Party.
4. **Decision by Chief Financial Officer.** Within thirty (30) days of receiving a Procurement Appeal, which satisfies the filing and content requirements set forth above, the Chief Financial Officer shall render a written decision as to the matters set forth in the Procurement Appeal. In the event a hearing is held, the aforementioned deadline shall be tolled until ten (10) business days following the conclusion of the hearing.
5. **Final Decision.** The decision rendered by the Chief Financial Officer shall be final and binding upon the Protesting Party.
6. **Special Rule for when Chief Financial Officer is a member of the Source Evaluation Committee.** If the Chief Financial Officer 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 Source Evaluation Committee shall be rendered by the Chief Executive Officer rather than the Chief Financial Officer. Accordingly, when the Chief Financial Officer is a member of the Source Evaluation Committee, the term “Chief Executive Officer”

shall be substituted for the term “Chief Financial Officer” where ever it appears in this **Section 6.4.2.B.**

[Remainder of page intentionally left blank; chart appears on following page.]

	<u>Ability to Decide Dispute</u>	<u>Filing Requirements</u>	<u>Time to Render a Decision</u>	<u>Rule Reference</u>
1	Procurement/Contracts Manager	Protesting Party must file Procurement Protest with Procurement/Contracts Manager within 5 business days of posting date of recommendation of award.	30 days of receiving a Procurement Protest.	6.3.1
2	Procurement Appeal Committee which shall consist of the following persons: -If Procurement involves an <u>RFB</u> : (1) CAO (as Chairperson); (2) user department director or designee; (3) 3 rd party; and (4) Procurement/Contracts Manager (as non voting member) -If Procurement involves an <u>RFP</u> : SEC Members	Protesting Party must file Procurement Appeal with Procurement/Contracts Manager within 5 business days of receiving Procurement/Contracts Manager's decision as to Procurement Protest.	30 days of receiving a Procurement Appeal, unless a hearing is held in which case the deadline will be tolled until 10 business days following conclusion of hearing.	6.3.2
3	Either arbitrator(s) or a court of law, as determined by the Authority.	As determined by applicable law or procedures of the American Arbitration Association.	As determined by applicable law or procedures of the American Arbitration Association.	6.3.3

~~6.4 **Procedure for Contract Disputes.** Any Contract Dispute shall be resolved in accordance with the following Contract Dispute Procedure. The Contract Dispute Procedure is the sole remedy for a Contract Dispute. The Contract Dispute Procedure is as follows:~~

~~6.4.1 **Step 1—Procurement/Contracts Manager.**~~

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 ~~A. All Contract Disputes shall initially be resolved by the Procurement/Contracts Manager. If the Contractor and the Authority have a Contract Dispute and the Contract Dispute is initiated by the Contractor, the Contractor shall submit a written notice to the Procurement/Contracts Manager describing the nature of the Contract Dispute, the remedy sought by the Contractor, and the legal basis for such remedy.~~ Step 1 – Procurement/Contracts Manager. The initial arbiter of any Contract Dispute shall be the Procurement/Contracts Manager. The process by which disputes shall be resolved by the Procurement/Contracts Manager 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 Procurement/Contracts Manager 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 Procurement/Contracts Manager 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

Procurement/Contracts Manager will result in a Waiver by the Protesting Party.

D. B. Decision by Procurement/Contracts Manager. Within fifteen (15) business days of receiving a written notice of a Contract Dispute, which complies with the requirements above, the Procurement/Contracts Manager shall ~~either reach a settlement with the Contractor or else deliver to the Contractor~~ render a written decision as to the ~~Contract Dispute.~~ The decision shall state the reasons for the decision reached and shall inform the Contractor of its appeal rights. ~~All settlements shall require the approval of the Governing Board or be approved through delegated authority, as set forth in this Administrative Rule, in order to be valid.~~ 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.

~~C. If the Contract Dispute is initiated by the Authority, the Procurement/Contracts Manager, on his or her own initiative, will deliver to the Contractor a written decision as to the Contract Dispute which shall state the reasons for the decision reach and shall inform the Contractor of its appeal rights.~~

E. D. The Appeal Right. The decision rendered by the Procurement/Contracts Manager's decision shall be final and conclusive unless binding on the Contractor appeals the decision, unless it is appealed in accordance with Section 6.4.2B6.5.2 below.

~~6.4.2 Step 2 Contract Appeal Committee.~~

~~A. If the Contractor desires to appeal the decision reached by the Procurement/Contracts Manager, the Contractor must file a formal written appeal (“Contract Appeal”) with the Procurement/Contracts Manager.~~

6.5.2 Step 2 – Chief Financial Officer. The appeal of any decision of the Source Evaluation Committee shall be rendered by the Chief Financial Officer. The process by which appeals shall be rendered by the Chief Financial Officer is as follows:

A. 1. Contract Appeal; Deadline for Filing. If the Contractor desires to appeal the decision of the Procurement/Contracts Manager, the Contractor must file a formal written appeal (“Contract Appeal”) with the Procurement/Contracts Manager. The Contract Appeal must be filed before 5:00 p.m. (local time) on of the fifteenth (15th) business day following the Contractor's receipt of the decision reached by date the Procurement/Contracts Manager— renders its decision in accordance with Section 6.5.1.D. Failure to file a Contract Appeal by such date and time

~~shall~~this deadline will result in a Waiver by the Contractor ~~and an~~
~~abrogation of any further Contract Dispute proceedings.~~

2. ~~The Contract Appeal must~~ state, with specificity, the grounds for
the Contract Appeal and also the action requested.

B. ~~Contract Appeal Committee.~~ The Authority shall convene an appeal
committee (the ~~“Contract Appeal Committee”~~) which shall be
comprised of the Chief Administrative Officer (who shall serve as the
Chairperson of the Contract Appeal Committee), the user department
director or designee, and an independent third party within the Authority
appointed by the Chairperson, plus the Procurement/Contracts Manager as
a non-voting member. The Authority’s legal counsel will support the
Contract Appeal Committee in an advisory capacity. 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
Procurement/Contracts Manager was incorrect.

C. Hearing. The ~~Contract Appeal Committee~~ [Chief Financial Officer may,
in ~~its~~his or her sole discretion, ~~shall~~elect to conduct a hearing at which
the Contractor ~~will be permitted to~~may present evidence to support his,
her or its position. ~~[Nothing herein shall be interpreted to require that~~
~~the Contract Appeal Committee conduct a hearing.]~~ ~~[Describe the~~
~~process and procedures to be followed at the hearing]~~ 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 Chief Financial
Officer will result in a Waiver by the Contractor.

D. ~~Settlement or Decision by Chief Financial Officer.~~ Within thirty (30)
days of receiving a Contract Appeal ~~which satisfies,~~ satisfying the filing
and content requirements set forth above, the ~~Contract Appeal Committee~~
~~shall either reach a settlement with the Contractor or else~~ Chief Financial
Officer 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. ~~All settlements shall require the approval of the Governing~~
~~Board or be approved through delegated authority, as set forth in this~~
~~Administrative Rule, in order to be valid.~~

~~6.4.3 Step 3 Arbitration or Judicial Action.~~ If, after exhausting its remedies
described in Section 6.4.1 and 6.4.2, and assuming that it has not committed a

~~Waiver by failing to properly and timely file a Contract Appeal, the Contractor may seek to have its Contract Dispute resolved by either a court of law or by binding arbitration, subject to the Authority having the sole discretion to determine which forum (i.e., court of law or binding arbitration) is the appropriate forum for resolving the Contract Dispute. The Contractor shall request in writing a determination from the Authority as to the appropriate forum for finally resolving the Contract Dispute following the exhaustion of its remedies described in Section 6.4.1 and 6.4.2, and the Authority shall provide such determination within five (5) business days of receiving such request.~~

E. **Final Decision.** The decision rendered by the Chief Financial Officer 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 Chief Financial Officer, 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 Contracts Disputes when there is a Contingency or Savings. The Chief Executive Officer or Chief Financial Officer, 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, irrespective of whether the dispute, claim or controversy involves a Minor or Major Contract, if either of the following two conditions is met:

1. Contingency. There was a contingency approved by the Board in connection with the award of the Contract and the settlement amount does not exceed the lesser of (a) \$25,000 or (b) 25% of the contingency amount; or
2. Savings. The settlement amount does not exceed any savings the Authority realized under the Contract. When used herein, the term “savings” refers to the amount by which the original dollar value of the Contract (inclusive of all exercised options) exceeds the total cost to the Authority for all goods and services received by the Authority under said Contract.

C. 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, B or C at its first Board meeting following the settlement.

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 Chief Financial Officer 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. ~~**Arbitration.**~~ ~~If the Authority decides to resolve the Contract Dispute by arbitration, such protest shall be settled by arbitration 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.~~ 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. ~~**Judicial Action.**~~ ~~If the Authority decides to resolve the Contract Dispute in a court of law, then each of the following provisions shall be applicable:~~ The Chairman of the Governing Board has first consented to the specific settlement.

~~(i) **Jurisdiction and Venue.**~~ ~~Any action, suit or proceeding arising in connection with the Contract Dispute shall be brought in the exclusive jurisdiction of the 9th Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division, and~~

~~(ii) **JURY TRIAL WAIVER.** EACH, THE AUTHORITY AND THE CONTRACTOR, AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL THEN OR THEREAFTER EXIST WITH REGARD TO THE CONTRACT DISPUTE, OR ANY CLAIM, 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.~~

~~6.4.4 **Contract Dispute Chart.** The following chart summarizes the process for resolving Contract Disputes. In the event there is a conflict between the information contained in the following chart and the provisions of Sections 6.4.1-6.4.3, the provisions of Sections 6.4.1-6.4.3 shall control.~~

	<u>Ability to Decide Dispute</u>	<u>Filing Requirements</u>	<u>Time to Render a Decision</u>	<u>Rule Reference</u>
1	Procurement/Contracts Manager	Contractor must file notice of Contract Dispute with Procurement/Contracts Manager if initiated by Contractor.	30 days of receiving a written Contract Dispute.	6.4.1
2	Contract Appeal Committee which shall consist of the following persons: (1) CAO (as Chairperson); (2) user department director or designee; (3) 3 rd party; and (4) Procurement/Contracts Manager (as non voting member)	Contractor must file Contract Appeal within 15 business days of receiving Procurement/Contracts Manager's decision as to Contract Dispute.	30 days of receiving a Contract Appeal, unless a hearing is held in which case the deadline will be tolled until 10 business days following conclusion of hearing.	6.4.2
3	Either arbitrator(s) or a court of law, as determined by the Authority.	As determined by applicable law or procedures of the American Arbitration Association.	As determined by applicable law or procedures of the American Arbitration Association.	6.4.3

~~6.5 **Settlement of Disputes.** Except as expressly set forth in a resolution by the Governing Board or in **these Administrative Rules**, the settlement of any actual or threatened Litigation must be approved by the Governing Board. The foregoing notwithstanding, the Authority's Chief Executive Officer is empowered to settle any actual or threatened Litigation where the settlement amount does not exceed \$150,000, as calculated on a~~

~~[per-person] basis, without first obtaining the approval of the Governing Board. If the Governing Board has not first approved a Litigation settlement, then the~~

6.6.3 Notification of Governing Board. The Governing Board must be notified of ~~the settlement at its first~~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.

~~[LYNX Staff— Advise if the \$150,000 delegation of authority is sufficient or do you want specific dollar amounts for specific types of settlement.]~~