

## DEPARTMENTAL INPUT

### CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

**New**   
  **OTR**   
  **Sole Source**   
  **Bid Waiver**   
  **Emergency**   
 Previous Contract/Project No. \_\_\_\_\_  
 Contract \_\_\_\_\_  
 **Re-Bid**   
  **Other**   
 LIVING WAGE APPLIES:  YES     NO  
 Requisition No./Project No.: RQMT1600011   
 TERM OF CONTRACT 5 YEAR(S) WITH 0 YEAR(S) OTR  
 Requisition /Project Title: Heavy Duty Transit Coaches

**Description:**  
 Purchasing five (5) diesel buses and ancillary items, in accordance with the terms and conditions of a competitively awarded contract by LYNX (contract no. 14-C09) with Gillig LLC.

Issuing Department: DTPW   
 Contact Person: Fred Shields   
 Phone: 305-637-3741  
 Estimate Cost: \$2,669,820.00  
 Funding Source: GENERAL    FEDERAL    OTHER  
FTA

### ANALYSIS

<b>Commodity Codes:</b>	<u>556</u>				
Contract/Project History of previous purchases three (3) years Check here <input type="checkbox"/> if this is a new contract/purchase with no previous history.					
	<b>EXISTING</b>	<b>2<sup>ND</sup> YEAR</b>	<b>3<sup>RD</sup> YEAR</b>		
<b>Contractor:</b>					
<b>Small Business Enterprise:</b>					
<b>Contract Value:</b>	\$	\$	\$		
<b>Comments:</b>					

Continued on another page (s):     YES     NO

### RECOMMENDATION

	<b>Set-aside</b>	<b>Sub-contractor goal</b>	<b>Bid preference</b>	<b>Selection factor</b>
<b>SBE</b>				

**Basis of recommendation:**  
Funded with FTA funds

Signed: <u>Jesus Lee</u>	Date sent to SBD: <u>11/24/15</u>
Also send to: <u>oca@miamidade.gov</u>	Date returned to DPM: _____

To meet this requirement, effective immediately, please use the same input document used for SBD review for measures. Please copy OCA at [oca@miamidade.gov](mailto:oca@miamidade.gov) when sending the Input Document to SBD. Please feel free to reach out to your respective manager or me directly with any questions.

EXECUTION  
COPY



**CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY**

**CONTRACT No: 14-C09**

**For**

**HEAVY DUTY TRANSIT COACHES**

**THIS AGREEMENT** (hereinafter, the "**Contract**") is made as of the 12<sup>th</sup> day of December, 2013 (the "**Effective Date**") by and between:

**THE CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX** (hereinafter referred to as "**LYNX**"), a body politic and corporate, created by Part II, Chapter 343, Florida Statutes, whose address is 455 North Garland Avenue, Suite 500, Orlando, Florida 32801;  
and

**Gillig LLC** a California Limited Liability Company (hereinafter referred to as the "**Contractor**"), with its principal place of business located at 25800 Clawiter Rd, Hayward CA and a Federal Employer Identification Number of 26-3085364.

**WITNESSETH:**

**WHEREAS**, LYNX was created by the above-stated charter to perform functions necessary for the achievement of an integrated, efficient and well-balanced public transportation system, and to take all steps and actions necessary or convenient for the conduct of its business; and

**WHEREAS**, LYNX desires to obtain goods and/or services (collectively, the "**Services**"), according to the requirements in **LYNX RFP 13-R06 Heavy Duty Transit Coaches** (hereinafter referred to as the "**Solicitation**") and as further described herein; and

**WHEREAS**, the Contractor has submitted a proposal or response in connection with the Solicitation, which has been selected by LYNX (hereinafter referred to as the "**Response**"); and

**WHEREAS**, the Contractor warrants to LYNX that it is qualified and duly licensed to furnish the Services in Florida and meet the obligations set forth in the Solicitation, the Response, and the documents detailing the scope of services attached hereto as **Exhibit "A"** and incorporated herein by this reference (the "**Scope of Services**"), and as hereinafter stated; and

**WHEREAS**, the Contractor warrants that the representations made by it in its Response to the Solicitation remain valid, accurate and binding upon it; and

**WHEREAS**, the Contractor desires to render the Services and meet the obligations set forth in the Solicitation, the Response, and the Scope of Services and upon the terms and conditions set forth in the Contract Documents, as defined herein.

**WHEREAS**, LYNX is the Executive Agent for certain other agencies detailed in the Scope of Services (each a "**Procuring Agency**" and collectively, the "**Procuring Agencies**"), which agencies also desire to obtain Services according to the requirements in the Solicitation and as further described herein; and

**WHEREAS**, LYNX and the Contractor agree that the Procuring Agencies shall be authorized to issue individual purchase orders in accordance with the terms and conditions of the Contract.

**NOW, THEREFORE**, in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **RECITALS.** The Recitals set forth above are incorporated herein by this reference.
2. **DEFINITIONS.** Terms not defined herein shall have the meanings as set forth in the Contract Documents in the order of precedence set forth in **Section 3** hereof. Terms not defined in the Contract Documents shall have the meanings ascribed to such terms in applicable state, local or federal regulations, including but not limited to LYNX's Administrative Rules as the same may be amended and restated from time to time and which are available at [www.golynx.com](http://www.golynx.com) (the "**Administrative Rules**"). If there is a conflict between any defined terms, the reasonable interpretation of said term by LYNX shall govern.
3. **CONTRACT DOCUMENTS.** For the purposes of this Contract, the following documents are collectively referred to herein as the "**Contract Documents**":
  - (a) This Contract together with all Exhibits hereto;
  - (b) The General Provisions of LYNX, Attached as Exhibit C ;
  - (c) The Solicitation, as Amended; and
  - (d) The Response.

The terms of the Contract Documents are incorporated herein by this reference. In the event of conflict between the terms of the Contract Documents, the order of precedence is as set forth above (thus, if there is a conflict between the terms of the Solicitation and the terms of the Response, the terms of the Solicitation shall govern). In addition, to the extent any of the terms of the Response conflict or in the reasonable opinion of LYNX are not relevant to the remaining Contract Documents, then, in that event, the provisions contained in the Response will not be applicable nor a part of the Contract Documents.

Contract Documents shall further include any later amendments or change orders.

4. **FURNISHING OF SERVICES.** In regard to the Services to be furnished by the Contractor:
  - (a) **Furnishing of Services.** The Contractor shall furnish to LYNX the Services in compliance with the Contract Documents.

(b) **Minimum and Maximum Quantities.** The minimum number of Buses to be purchased collectively by LYNX and the Procuring Agencies is twenty-four (24). The maximum number of Buses to be purchased by LYNX and the Procuring Agencies is one thousand five hundred and eighty-five (1,585). (The term "Buses" shall have the meaning set forth in the Scope of Services.)

5. **TERM.**

(a) **Term.** Subject to the further provisions set forth in this **Section 6**, the term of this Contract shall be for a period of five (5) years commencing on **December 12, 2013** and ending **December 11, 2018**.

(b) **Termination.** LYNX shall have the right to terminate this Contract at any time, in accordance with the provisions of **Section 11** below.

6. **PAYMENT.**

(a) **Payment.** LYNX or the Procuring Agency agrees to pay the Contractor for the Services the amount provided in the Price Schedule attached hereto as **Exhibit "B"** and incorporated herein by this reference.

(b) **Procedure for Invoicing.** Invoicing for Buses and related Services must be rendered in accordance with LYNX policies and procedures on a monthly basis, or as otherwise provided in the Contract Documents. For orders placed by LYNX, the invoice must be sent to Central Florida Regional Transportation Authority, Accounts Payable, 455 North Garland Avenue, Orlando, Florida 32801, or such other address as may be specified by LYNX from time to time. Orders placed other Procuring Agencies will be invoiced in accordance with Agency's Purchase Order.

(c) **Time of Payment by LYNX.** Subject to the terms and conditions provided herein, payment will be made within thirty (30) days after receipt of a proper invoice and acceptance (final or provisional) of the Bus(es). Within fifteen (15) days after arrival at the designated point of delivery, each Bus shall undergo testing by LYNX or the applicable Procuring Agency. If the Bus passes these tests, acceptance of the Bus by LYNX or the applicable Procuring Agency occurs on the fifteenth (15<sup>th</sup>) day after delivery. Acceptance may occur earlier if LYNX or the applicable Procuring Agency notifies the Contractor of early acceptance or places the Bus in revenue service. If the Bus fails these tests, the Contractor requests a letter of discrepancies for resolution be issued by the fifteenth (15<sup>th</sup>) day after delivery. LYNX and the Procuring Agencies reserve the right to conditionally or provisionally accept one or more Buses subject to the correction of minor deficiencies.

(d) **Additional Information.** LYNX may request additional documentation from the Contractor prior to payment of any invoice or bill from the Contractor. LYNX may disallow and deduct any cost for which proper documentation is not provided.

(e) **Receipt of Payment by Contractor as Waiver Against LYNX.** The acceptance by the Contractor, its successors, or assigns, of any progress or final payment due pursuant to this Contract, shall constitute a full and complete release of LYNX from any and all claims, demands, or causes of action whatsoever that the Contractor, its successors, or assigns may have against LYNX or in connection with the Services performed hereunder, through the date that the Services are rendered and for which such payment is made.

(f) **Subcontractors.** In the event the Contractor is utilizing any subcontractors for the furnishing of Services (which would only be as permitted in the Contract Documents), then, upon request by LYNX, the Contractor shall further provide to LYNX copies of billings and other invoices which may be received from any such subcontractors and, in addition, the Contractor will obtain releases from time to time in favor of LYNX from any subcontractor(s) for work so performed by that subcontractor. LYNX shall have the right from time to time to directly contact and discuss with the subcontractor any work performed by that subcontractor under the Contract Documents, but LYNX will not have any liability or obligation to said subcontractor(s).

(g) **Withholding of 5% of Cost of Buses.** The Procuring Agency may withhold up to five percent (5%) of the total cost of each delivered and accepted Bus to assure correction of minor deficiencies. The withheld funds shall be paid in full to the Contractor within thirty (30) days of Bus acceptance, unless specific defects are found in the vehicle or it is subject to a fleet defect. The defect(s) found shall be described and submitted in writing, including the relevant specification requirement, to the Contractor when identified and within the thirty (30) day withholding period. The withheld funds shall be paid in full to the Contractor upon repairs of the vehicle or receipt of a written commitment from the Contractor reflecting a mutual agreement to resolve the identified deficiency. The withholding option set forth in this subparagraph shall be in addition to any damages and remedies available to LYNX as set forth elsewhere in this Contract or which are otherwise available to LYNX under applicable law. The exercise by LYNX of the withholding option set forth in this Section shall in no way constitute a waiver of LYNX's ability to seek or exercise any other damages or remedies available under this Contract, the other Contract Documents or otherwise available to it at law or in equity.

## 7. **CONTRACTOR'S OBLIGATIONS.**

(a) **Furnishing of Materials and Labor.** The Contractor shall, for the consideration set forth herein, and at its sole cost and expense, as an independent contractor, provide all labor, materials, equipment, tools, supplies and incidentals necessary to perform this Contract in the manner and to the full extent as set forth in the Contract Documents.

(b) **Standard of Care.** The Contractor shall furnish, provide or fulfill its obligations under this Contract in a professional manner to the reasonable satisfaction of the duly authorized representatives of LYNX, who shall have, at all times, full opportunity to monitor the services performed under this Contract. The Contractor's performance shall be considered acceptable when:

(i) The Contractor's performance has been inspected and approved by LYNX or the applicable Procuring Agency and, if applicable, all punchlist items have been properly corrected to LYNX's or the applicable Procuring Agency's satisfaction; and

(ii) The Contractor has delivered to LYNX or the applicable Procuring Agency adequate documentation for securing title to the Bus(es) in the county of the applicable Procuring Agency (including without limitation a notarized MSO document transferring ownership), free and clear of all liens, mortgages and encumbrances, financing statements, claims and demands of any character; and

(iii) all the other duties and obligations to be performed by the Contractor under the Contract Documents have been satisfactorily met or performed, including the delivery to LYNX of any materials or documentation relating to the Services, including any warranty materials.

(c) **Compliance with Applicable Requirements.** The Contractor shall conform to all applicable governmental requirements and regulations, whether or not such requirements and regulations are specifically set forth in the Contract Documents. The Contractor in this regard understands that LYNX is a public agency which receives both federal and state funding and, if applicable, the Contract Documents and the performance by the Contractor shall be subject to any applicable rules and regulations promulgated by the Federal Transit Administration (FTA) and/or the Florida Department of Transportation (FDOT).

(d) **Payment of Taxes and Fees.** The Contractor shall pay any applicable license fees and all sales, consumer, use and other similar taxes relating to the Contract, and the matters to be performed thereunder, if any. LYNX is exempt from payment of Florida sales and use taxes. LYNX will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with LYNX, nor is the Contractor authorized to use LYNX's tax exemption number in securing such materials. LYNX reserves the right to "direct buy" any materials to be furnished by the Contractor under the Contract Documents and, if LYNX so submits, then the parties will enter into an appropriate agreement reflecting said direct purchase, the effect of which will be for LYNX to directly purchase those materials, for the contract amount to be reduced by the amount of the purchase price paid by LYNX for said materials, for those materials to be physically acquired and/or delivered to the Contractor, who will install them or deliver them as provided in the Contract Documents, with full warranties regarding those materials as if those materials were purchased from the Contractor. Any bonds furnished by the Contractor will apply to those materials.

(e) **FICA.** The Contractor shall be responsible for payment of its employee(s)' Federal Insurance Contributions Act benefits with respect to this Contract.

(f) **Permits and Approvals.** Unless otherwise expressly set forth in the Contract Documents, the Contractor shall be responsible to secure, at the Contractor's expense, all necessary permits and approvals. The Contractor shall promptly furnish copies of all such permits and approvals to LYNX as and when obtained.

(g) **Tests and Inspections.** The Contractor shall be responsible to coordinate all tests and inspections necessary for the proper execution and timely completion of this Contract.

(h) The Contractor shall indemnify and hold harmless LYNX and the Procuring Agencies or any of them, from and against all claims of liability to third parties for injury to or death of persons, or loss of or damage to property arising out of or in connection with the performance of the work under this Contract, and the use of the premises incident thereto, except where such liability arises out of the sole negligence of LYNX or the Procuring Agencies, or any of them, and shall defend all suits brought upon such claim and pay all costs and expenses incident thereto. LYNX and the applicable Procuring Agency shall have the right to participate in the defense of any suit, without relieving the Contractor of any obligation hereunder.

(i) **Indemnification**. The Contractor understands that in performing the Services hereunder it will be responsible for the consequences of its own actions. Therefore, the Contractor agrees that it will indemnify, defend and hold harmless LYNX as well as LYNX's officers, directors, employees, agents and representatives and each of the heirs, executors, successors and assigns of each of the foregoing from, against and in respect of all claims, liabilities, obligations, losses, costs, expenses, penalties, fines and judgments (at equity or at law) and damages whenever arising or accruing (including, without limitation, amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or related to the Contractor's performance of the Services hereunder, including, without limitation, any acts or omissions with respect thereto.

(j) **Insurance**. During the term of this Contract (as well as during all option terms), the Contractor shall procure and maintain, at its sole expense, commercial general liability insurance with a financially responsible insurance carrier in an amount reasonably acceptable to LYNX and, at the request of LYNX, the Contractor shall name LYNX as an additional insured. The requirements set forth in the previous sentence shall be in addition to any other requirement that the Contractor maintain a specified level of insurance as otherwise set forth in the Contract Documents. The Contractor shall provide LYNX with a copy of insurance certificate(s) demonstrating the satisfaction of the requirements set forth herein or as otherwise set forth in the Contract Documents, as and when requested by LYNX.

(k) **Environmental Principles**. To the extent practicable, the Contractor shall assist LYNX in achieving the principles set forth in the LYNX Environmental Policy, a copy of which is available at <http://golynx/EMSpolicyManual.com>.

(l) **Additional Information**. The Contractor, at the request of LYNX, shall further provide to LYNX such other information as LYNX may reasonably request from time to time. Further, the Contractor shall at LYNX's request meet and have its employees and representatives meet with LYNX from time to time, regarding any of the Services to be rendered under the Contract.

## 8. **NO DISCRIMINATION/DBE REQUIREMENTS.**

(a) **No Discrimination**. Neither the Contractor nor any of its subcontractors shall discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as LYNX deems appropriate.

(b) **DBE Requirements**. DBE requirements for this contract are set forth in Attachment G to the Solicitation document.

9. **PUBLIC RECORDS**. LYNX is an agency of the State and is subject to Florida's Public Records Act, Chapter 119, Florida Statutes (the "Public Records Act"). It is possible that the Contractor, as a result of the Contract, may also be subject to the Public Records Act and, if so, the Contractor will promptly respond in accordance with said statute to any and all third party requests for "public records," as that term is defined in the Public Records Act. In regard to any such request, the Contractor will promptly notify LYNX. LYNX's determination as to the necessity of such response shall be presumptively correct.

10. **LYNX PROPRIETARY INFORMATION.** The Contractor may, by virtue of this Contract, come into possession of certain non-publicly available information relating to LYNX, which information may or may not be proprietary to LYNX (the "**Information**"). In any event, the Contractor agrees that any such Information is solely for the purpose of enabling the Contractor to fulfill its duties and obligations under this Contract, and the Contractor may not use any such Information for any other purpose whatsoever without the express, written permission of LYNX. By way of illustration and not limitation, any such Information may not be used by the Contractor in submitting a Request for Proposal for any other purpose, whether to LYNX or to any other third party. Upon the expiration or termination of the Contract, the Contractor will return to LYNX any proprietary Information and will not, without LYNX's prior written approval, keep or maintain any copies or transcripts thereof.

11. **TERMINATION.**

(a) **Default by Contractor.** LYNX may, in its sole and absolute discretion, by written notice of default to the Contractor, terminate all or any part of this Contract if (i) the Contractor fails to perform the Services described herein, within the time specified herein or any extension hereof; or (ii) if the Contractor fails to satisfy any of the other provisions of the Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms; and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may in his/her absolute discretion authorize in writing) after receipt of notice from the Contracting Officer specifying such failure. In the event that LYNX elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by LYNX shall not limit LYNX's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

(b) **Termination by LYNX for Convenience.** This Contract may be terminated by LYNX in its absolute discretion, in whole or in part, whenever the LYNX Contracting Officer or LYNX shall determine that such termination is in the best interest of LYNX. Any such termination shall be effected by delivery of a notice of termination by LYNX to the Contractor, specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective. The Contractor shall be paid its costs, including contract closeout costs, and profit on Services performed by the Contractor up to the effective date of Contract termination. The Contractor shall promptly submit its claim for final payment to LYNX. Settlement of claims by the Contractor under this **Section 12(b)** shall be in accordance with the provisions set forth in Part 49 of Title 48 - Federal Acquisition Regulations (48 C.F.R. 49), except that wherever the word "Government" appears it shall be deleted and the word "LYNX" shall be substituted in lieu thereof.

(c) **Default by LYNX.** In the event LYNX is in default under this Contract, the Contractor shall first provide written notice to LYNX of said condition alleged by the Contractor to be a default, and LYNX shall have a reasonable period of time, not to exceed 60 days, within which to cure said default. During said period, the Contractor shall continue to provide the services to LYNX. In the event LYNX continues to be in default under this Contract upon the expiration of the time period set forth above for curing its default, this Contract may be terminated by the Contractor upon providing a notice of termination to LYNX.

(d) **Remedies for Default by Contractor.** If this Contract is terminated by LYNX for default by the Contractor, LYNX shall, except as otherwise expressly set forth in

the Contract Documents, retain any and all remedies available for it against the Contractor, including the remedy set forth in **Section 7(h)**, all of which remedies shall be exclusive. By way of illustration and not limitation, LYNX may proceed to obtain the remaining Services from another third party and thereby recover from the Contractor any "excess costs" incurred by LYNX in so doing.

12. **DISPUTE RESOLUTION.** If there is any controversy or claim arising out of or relating to this Contract, or the breach thereof (collectively, a "**Legal Dispute**"), the parties agree that LYNX shall have the sole and exclusive discretion to elect which of the means set forth below that LYNX and the Contractor shall use to settle the Legal Dispute. At the sole discretion and option of LYNX, the parties shall attempt to resolve any Legal Dispute by one or more of the following means (with the exception that (c) and (d) below are mutually exclusive) and abide by the provisions thereto:

(a) **Informal Meeting Between the Parties.** If LYNX decides that the parties should initially attempt to resolve the Legal Dispute informally, then the parties agree to a meeting between the LYNX CEO and the Contractor's CEO (or other such officer with equivalent binding authority) whereby both parties try in good faith to settle the dispute and reach an agreement.

(b) **Mediation.** If LYNX decides that the parties should attempt to resolve the Legal Dispute by mediation, then the parties agree to try in good faith to settle the dispute by mediation which shall follow the practices and procedures as set forth by the Circuit Court of Orange County Florida, subject to the Florida Rules of Appellate Procedure 9.700-9.740 and conducted by a Florida Supreme Court Certified Mediator before resorting to arbitration or judicial action. Any such mediation shall be held in Orange County, Florida.

(c) **Arbitration.** If LYNX decides that a Legal 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.

(d) **Court of Law.** If LYNX decides that a Legal Dispute should be resolved in a court of law, then any action, suit or proceeding arising in conjunction with the Legal Dispute shall be brought exclusively in the Ninth Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division.

Nothing in this **Section 12** shall in any way limit the right of LYNX to terminate this Contract under **Section 11** hereof.

13. **NOTICES.** All notices shall be made to the addresses listed in the preamble to this Contract, unless otherwise provided below:

(a) The Contractor's primary point of contact for daily operations of the Services pursuant to this Contract is: **Butch Sibley**, Regional Sales Manager; Regional Sales Manager; Telephone: (510) 589-9430; Email: bsibley@gillig.com.

(b) The Contractor's primary point of contact for legal notice and authority to modify or act under this Contract is: **Joseph Policarpio**, Vice President of Sales and Marketing; Gillig LLC, 25800 Clawiter Road, Hayward, CA 94545; Telephone:(510) 785-1500; Email: jpolicarpio@gillig.com.

(c) The Contractor may appoint other individuals upon written notice to, and approval by, LYNX. The Contractor shall provide written notice to LYNX promptly with respect to any changes to the aforesaid contact information.

(d) As of the date hereof, LYNX designates **David Burnett**, Deputy Director of Maintenance; 455 N. Garland Avenue, Orlando, FL 32801; Telephone: (407) 254-6193; Email: [dburnett@golynx.com](mailto:dburnett@golynx.com) (the "Project Manager") with respect to the Contractor's performance of this Contract, and who will also serve as the primary point of contact for operational issues. LYNX may change such designation upon written notice to the Contractor.

(e) As of the date hereof, LYNX designates **Nancy Rodriguez**, Senior Contracts Administrator, 455 N. Garland Avenue, Orlando, FL 32801; Telephone: (407) 254-6033; Email: [ganderson@golynx.com](mailto:ganderson@golynx.com) (the "Contracting Officer") as the primary point of contact for issues pertaining to contractual changes, modifications and overall Contractor performance. LYNX may change such designation upon written notice to the Contractor.

(f) The Project Manager, Contracting Officer, and all other officers, employees, executives, agents and representatives of LYNX have only such authority to act on behalf of and bind LYNX to the extent granted to such individuals by the LYNX Governing Board, and no apparent authority of any such individuals shall be binding upon LYNX. No individual shall have the authority to act pursuant to this Contract or to modify or amend this Contract except in accordance with the LYNX Administrative Rules and such other policies and procedures that may be adopted by LYNX pursuant thereto. No such action, modification or amendment shall be valid or binding upon LYNX, if the authorizing representative of LYNX has exceeded the authority actually granted to such individual by the LYNX Governing Board.

#### 14. MISCELLANEOUS.

(a) Governing Law. The parties mutually acknowledge and agree that this Contract shall be construed in accordance with the laws of the State of Florida, without regard to the internal law of Florida regarding conflicts of law.

(b) Attorney Fees. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, claim, or misrepresentation arising out of or in connection with any of the provisions of this Contract, the prevailing party or parties shall be entitled to recover its or their reasonable attorneys' fees (including paralegals' fees), court costs, expenses, and costs of experts and investigation, whether at trial, upon appeal, or during investigation by such prevailing party or parties in prosecuting or defending such legal action or other proceeding.

(c) Waiver Of Jury Trial. **EACH PARTY HEREBY 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 NOW OR HEREAFTER EXIST WITH REGARD TO THE CONTRACT DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS 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.**

(d) **Assignment by Contractor.** LYNX has selected the Contractor to render the Services based in substantial part on the personal qualifications of the Contractor; as such, the Contractor may not assign or transfer any right or obligation of this Contract in whole or in part, without the prior written consent of LYNX, which consent may be granted or withheld in the sole discretion of LYNX. The Contractor may utilize subcontractors as otherwise permitted and provided in the Contract Documents. Any assignment or transfer of any obligation under this Contract without the prior written consent of LYNX shall be void, *ab initio*, and shall not release the Contractor from any liability or obligation under the Contract, or cause any such liability or obligation to be reduced to a secondary liability or obligation.

(e) **Assignment by LYNX.** LYNX may unilaterally assign the right for purchases under this Contract to other Agencies listed in the Solicitation Document. LYNX will not assign rights without the prior concurrence of the Florida Public Transportation Authority subject to their then existing policies, rules and procedures. Any assignment of the rights and responsibilities of this contract is restricted to those agencies listed in the original procurement, including any added by solicitation amendment prior to award. Additionally, all agencies with quantities originally provided to LYNX as part of the pre-solicitation planning process must document in writing should any excess quantities not be needed, were unintentional, and are not needed to support its transit system. Additional quantities thus released may then be assigned to other Consortium agencies listed in the contract.

(f) **RESERVED**

(g) **Captions and Headings.** The captions and headings provided herein are for convenience of reference only and are not intended to be used in construing the terms and provisions hereof.

(h) **Number And Gender.** Whenever herein the singular or plural is used the same shall include the other where appropriate. Words of any gender shall include other genders when the context so permits.

(i) **Multiple Counterparts.** This Contract may be executed in a number of identical counterparts each of which is an original and all of which constitute collectively one agreement. In making proof of this Contract in any legal action, it shall not be necessary to produce or account for more than one such counterpart.

(j) **Survival.** Should any provision of this Contract be determined to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired.

(k) **No Third-Party Beneficiary.** It is specifically agreed that this Contract is not intended by any of the provisions of any part of this Contract to establish in favor of any other party, the public or any member thereof, the rights of a third-party beneficiary hereunder, or to create or authorize any private right of action by any person or entity not a signatory to this Contract to enforce this Contract or any rights or liabilities arising out of the terms of this Contract.

15. **AMENDMENT OF CONTRACT.** This Contract may not be modified or amended without the prior written consent of the party to be charged by said amendment or modification. This provision may not itself be changed orally. The Contractor specifically is aware and understands that any material or substantial change to this Contract may require approval of LYNX's Governing Board for any such change to be valid.

**Independent Contractor.** The Contractor at all times shall be an independent contractor. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors, and their suppliers, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract requirements. There shall be no contractual relationship between any subcontractor and supplier of the Contractor and LYNX by virtue of the Contract. No provision of the Contract shall be for the benefit of any party other than LYNX and the Contractor.

**Interest Of Public Officials.** Contractor represents and warrants that no employee, official, or member of the board of LYNX, during his or her tenure or two years thereafter, is or will have a pecuniary interest or benefit directly or indirectly from the Contract or the proceeds thereof. Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member of the Board of LYNX. For breach of any representation or warranty in this clause, LYNX shall have the right to annul the Contract without liability and/or have recourse to any other remedy it may have at law.

**Material and Workmanship.** All equipment, material, and articles incorporated into the Work covered by the Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor at its option, may use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in the Contract.

**Organization And Direction Of The Work.** When the Contract is executed, the Contractor shall, at the request of the Project Manager, submit to the Project Manager a chart showing the general executive and administrative organization, the personnel to be employed concerning the Work under the Contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it, as additional information becomes available. Work performance under the Contract shall be under the full-time resident direction of:

- (1) The Contractor, if the Contractor is an individual;
- (2) One or more principal partners, if the Contractor is a partnership; or
- (3) One or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, a specific person may represent the Contractor in the direction of the Work or persons holding positions other than those identified in this paragraph.

**Publicity Releases.** All publicity releases or releases of reports, papers, article, maps or other documents in any way concerning the Contract or the Work hereunder which the Contractor or any of its subcontractor desires to make for purposes of publication in whole or in part, shall be subject to approval by the Contracting Officer prior to release.

**Prohibition Against Contingent Fees.** Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure the Contract and that Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of the Contract. For the breach or violation of this provision, the Executive Director shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

**Program Funding.** LYNX's performance and obligations to pay under the Contract are contingent upon the availability of various Federal, State and local funding.

**Subcontractors and Outside Consultants.** Any subcontractors and outside associates or consultants required by the Contractor concerning the services covered by the Contract will be limited to such individuals or firms as were specifically identified and agreed to by LYNX concerning the award of the Contract. Any substitution in such subcontracts, associates, or consultants will be subject to the prior approval of the Contracting Officer.

**Truth in Negotiation.** Contractor agrees to execute a Truth-in-Negotiation Certificate in accordance with Florida Statutes §287.055 stating that the wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting.