

# CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

## GENERAL PROVISIONS DOCUMENT

<b>6.01</b>	<b>PROVISIONS APPLICABLE TO ALL CONTRACTS.....</b>	<b>1</b>
6.01.01.	Accident Prevention.....	1
6.01.02.	Americans with Disabilities Act.....	1
6.01.03.	Application Of Federal Laws Clause.....	1
6.01.04.	Audits and Inspection.....	1
6.01.05.	Civil Rights.....	2
6.01.06.	Compliance With Law.....	2
6.01.07.	Composition Of Contractor.....	2
6.01.08.	Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any Contract:.....	2
6.01.09.	Disadvantaged Business Enterprise.....	3
6.01.10.	Energy Conservation.....	3
6.01.11.	Federal Assistance and Incorporation of Federal Transit Administration (FTA) Terms.....	3
6.01.12.	Federal Changes.....	3
6.01.13.	Federal, State And Local Taxes.....	3
6.01.14.	Fly America Requirements.....	4
6.01.15.	Indemnification.....	4
6.01.16.	Independent Contractor.....	4
6.01.17.	Interest Of Public Officials.....	4
6.01.18.	Material and Workmanship.....	4
6.01.19.	No Obligation by the Federal Government.....	5
6.01.20.	Organization And Direction Of The Work.....	5
6.01.21.	Publicity Releases.....	5
6.01.22.	Prohibition Against Contingent Fees.....	5
6.01.23.	Program Fraud and False or Fraudulent Statements or Related Acts.....	5
6.01.24.	Program Funding.....	6
6.01.25.	Subcontractors and Outside Consultants.....	6
6.01.26.	Termination.....	6
6.01.27.	Truth in Negotiation.....	7
<b>6.02</b>	<b>PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING TEN THOUSAND DOLLARS (\$10,000).....</b>	<b>7</b>
6.02.01.	Recovered Materials.....	7
6.02.02.	Approval of Materials.....	8
6.02.03.	Changes.....	8
6.02.04.	Errors And Omissions.....	9
6.02.05.	Insurance.....	9

	6.02.06. Notice Of Labor Disputes .....	11
<b>6.03</b>	<b>PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING TWENTY FIVE THOUSAND DOLLARS (\$25,000).....</b>	<b>11</b>
	6.03.01. Suspension and Debarment.....	11
<b>6.04</b>	<b>PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS (\$100,000) .....</b>	<b>12</b>
	6.04.01. Bonding.....	12
	6.04.02. Claims for Damages.....	14
	6.04.03. Clean Air and Clean Water .....	14
	6.04.04. Contract Work Hours and Safety Standards .....	15
	6.04.05. Disputes.....	16
	6.04.06. Lobbying .....	16
	6.04.07. Performance During Dispute .....	16
	6.04.08. Rights and Remedies.....	16
<b>6.05</b>	<b>PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING FIVE HUNDRED THOUSAND DOLLARS (\$500,000) .....</b>	<b>17</b>
	6.05.01. Notification of Federal Participation .....	17
<b>6.06</b>	<b>PROVISIONS RELATING TO ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS .....</b>	<b>17</b>
	6.06.01. Seismic Safety.....	17
	6.06.02. Special Termination Provisions .....	17
<b>6.07</b>	<b>PROVISIONS RELATING TO CONSTRUCTION CONTRACTS.....</b>	<b>17</b>
	6.07.01. Buy America .....	17
	6.07.02. Cargo Preference - Use of United States-Flag Vessels.....	18
	6.07.03. Cleaning Up .....	18
	6.07.04. Continuing The Work .....	18
	6.07.05. Cooperation Of Contractor .....	18
	6.07.06. Davis-Bacon and Copeland Anti-Kickback Acts .....	19
	6.07.07. Differing Site Conditions.....	26
	6.07.08. Layout Of Work.....	26
	6.07.09. Maintenance During Construction.....	27
	6.07.10. Occupational Safety and Health ("OSHA").....	27
	6.07.11. Operations And Storage Areas.....	28
	6.07.12. Protection Of Vegetation, Structures, Equipment & Utilities.....	28
	6.07.13. Safety .....	28
	6.07.14. Schedules For Construction Contracts .....	29
	6.07.15. Seismic Safety.....	29
	6.07.16. Special Termination for Default Provisions .....	29
	6.07.17. Specifications And Drawings .....	30
	6.07.18. Suspension Of Work.....	31
	6.07.19. Use And Possession Prior To Completion.....	32
	6.07.20. Utilities.....	32
<b>6.08</b>	<b>PROVISIONS RELATING TO INTELLIGENT TRANSPORTATION SYSTEMS PROJECTS .....</b>	<b>32</b>
	6.08.01. Conformance with ITS National Architecture .....	32

<b>6.09</b>	<b>PROVISIONS RELATING TO MATERIALS AND SUPPLIES</b>	
	<b>CONTRACTS</b> .....	<b>32</b>
6.09.01.	Buy America .....	32
6.09.02.	Cargo Preference - Use of United States-Flag Vessels.....	33
6.09.03.	Certificate Of Conformance.....	33
<b>6.10</b>	<b>PROVISIONS RELATING TO OPERATIONS/ MANAGEMENT</b>	
	<b>CONTRACTS</b> .....	<b>34</b>
6.10.01.	Charter Service Operations .....	34
6.10.02.	Drug and Alcohol Testing.....	34
6.10.03.	School Bus Operations.....	34
6.10.04.	Transit Employee Protective Provisions .....	34
<b>6.11</b>	<b>PROVISIONS RELATING TO RESEARCH AND DEVELOPMENT</b>	
	<b>CONTRACTS</b> .....	<b>35</b>
6.11.01.	Patent Rights .....	35
6.11.02.	Rights in Data .....	36
<b>6.12</b>	<b>PROVISIONS RELATING TO ROLLING STOCK PURCHASE</b>	
	<b>CONTRACTS</b> .....	<b>38</b>
6.12.01.	Bus Testing .....	38
6.12.02.	Buy America .....	39
6.12.03.	Cargo Preference - Use of United States-Flag Vessels.....	39
6.12.04.	Pre-Award and Post Delivery Audit Requirements .....	39
<b>6.13</b>	<b>DEFINITIONS.</b> .....	<b>40</b>

# CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

## GENERAL PROVISIONS DOCUMENT

### 6.01 PROVISIONS APPLICABLE TO ALL CONTRACTS

**6.01.01. Accident Prevention.** The Contractor shall provide and maintain Work environments and procedures, which will safeguard the public and LYNX personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; avoid interruptions of LYNX operations and delays in project completion dates; and control costs in the performance of the Contract. Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or LYNX personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the Contract price or extension of the performance schedule on any stop work order issued under this clause. The Contractor shall insert this clause with appropriate changes in the designation of the parties, in subcontracts.

**6.01.02. Americans with Disabilities Act.** All design and construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

**6.01.03. Application Of Federal Laws Clause.** Contractor understands that Federal, state and local laws, regulations, policies, and related administrative practices ("Laws") applicable to the Contract on the date the Contract was executed (the "Execution Date") may be modified from time to time, or new Laws may be established after the Execution Date. Contractor agrees that the most recent of such Laws will govern the administration of the Contract at any particular time, unless there is sufficient evidence in the Contract of a contrary intent. Such contrary intent might be evidenced by express language in the Contract, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of the Contract.

**6.01.04. Audits and Inspection.** The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of the Work under the Contract in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulation Parts 30 and 31 (48 C.F.R. 30 and 31). The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of the cost submissions required for the Contract, or any Change Order or claim, and a

copy of the cost summary submitted to LYNX. LYNX, the U.S. Government, and the State Government or their authorized representatives shall have access, at all times during normal business hours, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Contractor will provide proper facilities for such access and inspection. The rights granted LYNX and the government under this provision shall remain in full force and effect for the longer of: (a) three (3) years after termination of the Contract for whatever reason, or (b) the date on which all litigation, appeals, claims or exceptions related to any litigation or settlement of claims arising from the performance of the Contract are resolved or otherwise terminated. The foregoing record keeping obligations shall extend to any subcontractor performing Work valued in excess of ten thousand dollars (\$10,000.00). In addition, with respect to major capital projects, Contractor agrees to provide access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. §5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

**6.01.05. Civil Rights.** The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability, in accordance with the following Federal statutes and regulations, and any other implementing regulations issued pursuant to the: Civil Rights Act as amended, Titles VI (42 U.S.C. Sec. 2000d) and VII (42 U.S.C. Sec. 2000e); Age Discrimination Act of 1975, as amended, Sec. 303 (42 U.S.C. 6102); Age Discrimination Action of 1967 as amended, Sec. 4 (29 U.S.C. Sec 623); Americans with Disabilities Act of 1990, as amended, Sec. 202 (42 U.S.C. 12132), and Sec. 102 (42 U.S.C. Sec. 12112) and implementing regulations (29 C.F.R. Part 1630), Federal transit law (49 U.S.C. Sec. 5332); Executive Order 11246, as amended by Executive Order 11375 42 U.S.C. Sec. 2000e note) and implementing regulations (41 C.F.R. Parts 60 et seq.). The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration.

**6.01.06. Compliance With Law.** Contractor shall perform all Work hereunder in compliance with all applicable federal, state and local laws and regulations, including, but not limited to, any applicable licensing or permitting laws. The Contractor shall use only licensed personnel to perform Work required by law to be performed by such personnel and shall bear the costs of obtaining all necessary licenses and permits.

**6.01.07. Composition Of Contractor.** If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and several hereunder.

**6.01.08. Contracts Involving Federal Privacy Act Requirements.** The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any Contract:

- (a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the

requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

(b) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**6.01.09. Disadvantaged Business Enterprise.** Contractor will conform to 49 C.F.R. Part 26.

**6.01.10. Energy Conservation.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the Florida energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**6.01.11. Federal Assistance and Incorporation of Federal Transit Administration (FTA) Terms.** The procurements under the Contract may be supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, pursuant to the Federal Transit Laws, 49 U.S.C. Chapter 53; Transportation Equity Act for the 21st Century 1998 (TEA-21), P.L. 105-178 as amended, TEA-21 Restoration Act 1998, P.L. 105-206; Sections 401 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. §403(11) and 40 U.S.C. §481(b), respectively; 49 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 49 C.F.R. Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; Executive Order 12612, "Federalism," dated 10-26-1987; FTA Circular 5010.1C, "Grant Management Guidelines" dated 10-1-98; FTA Master Agreement; Appendix D, Best Practices Procurement Manual. When so funded, the Contract shall be subject to all rules and regulations promulgated pursuant thereto, as they may be amended from time to time during the course of the Contract. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, as the same may be amended or superseded from time to time, are hereby incorporated by reference. Anything to the contrary, herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any LYNX requests which would cause LYNX to be in violation of the FTA terms and conditions.

**6.01.12. Federal Changes.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement (Form FTA MA (10) dated October 1, 2003) between Owner and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

**6.01.13. Federal, State And Local Taxes.** The Contract price includes all applicable federal, state, and local taxes and duties. LYNX is exempt from state and local sales

and use taxes. In addition, any such taxes included on any invoice or voucher received by LYNX shall be deducted from the amount of the invoice or voucher for purposes of payment.

**6.01.14. Fly America Requirements.** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**6.01.15. Indemnification.** Contractor shall fully indemnify and hold harmless LYNX and all of its directors, officers, employees, and agents from all claims demands, causes of action, damages, losses, and expenses (including attorney's fees), of whatsoever nature, character, or description that any person or entity has or may have arising out of or related to the breach of or failure to perform the Contract or any subcontracts hereunder or resulting from any negligent act, omission, misconduct, or fault of the Contractor or subcontractors and their employees and agents.

**6.01.16. 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.

**6.01.17. 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.

**6.01.18. 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.

**6.01.19. No Obligation by the Federal Government.** Contractor and LYNX agree that, notwithstanding any concurrence by the Federal Government in, or approval of the solicitation or award of the underlying Contract, absent the express written consent of the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to LYNX, the Contractor or any other party pertaining to any matter resulting from the underlying Contract. Contractor further agrees to include this clause, without modification, in any subcontract issued hereunder.

**6.01.20. 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:

- (a) The Contractor, if the Contractor is an individual;
- (b) One or more principal partners, if the Contractor is a partnership; or
- (c) 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.

**6.01.21. 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.

**6.01.22. 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.

**6.01.23. Program Fraud and False or Fraudulent Statements or Related Acts.** Contractor agrees that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sec. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Contract. Upon execution of



the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has make, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which the Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. Contractor further agrees to include this clause, without modification, in any subcontract issued hereunder.

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

**6.01.25. 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.

**6.01.26. Termination.**

(a) **Termination For Convenience.** LYNX may terminate the Contract, in whole or in part, at any time and for any reason by written notice to the Contractor when it is in the best interest of LYNX. The Contractor shall be paid its costs, including Contract close-out costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its termination claim to LYNX to be paid the Contractor. If the Contractor has any property in its possession belonging to LYNX, the Contractor will account for the same, and dispose of it in the manner LYNX directs.

(b) **Termination for Default.** If the Contractor fails to make delivery of the goods or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Contract, or so fails to make progress as to endanger performance of the 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 after receiving such notice from LYNX, thereafter, LYNX may terminate the Contract for default and have the Work completed and the Contractor shall be liable for any resulting cost to LYNX. In the event of termination for default, the Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract. If, after termination for failure to fulfill Contract

obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LYNX.

(c) **Termination Due to Insufficient Funds.** If at any time during the term of the Contract the LYNX Governing Board makes a determination that LYNX has insufficient funds with which to carry out its performance and obligations under the Contract, then LYNX may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to LYNX.

(d) **Termination Due to Failure to Receive a Grant or other Funding Device.** If at any time during the term of the Contract LYNX ceases to receive a grant or other funding device from a third party with which it intended to pay for the goods or services Contracted for, then, unless otherwise directed by the LYNX Governing Board, LYNX may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to LYNX.

(e) **Damages Upon Termination.** Any damages to be assessed to the Contractor as a result of a default termination or any claim by Contractor for costs resulting from a termination for convenience by LYNX, a termination due to insufficient funds by LYNX, or a termination due to a failure to receive a grant or other funding device by LYNX will be computed and allowable in accordance with federal regulations in effect at the time of termination.

**6.01.27. 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.

## **6.02 PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING TEN THOUSAND DOLLARS (\$10,000)**

**6.02.01. Recovered Materials.** With respect to contracts for items designated by the Environmental Protection Agency, when LYNX procures at least Ten Thousand Dollars (\$10,000) of such materials per year, the Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

**6.02.02. Approval of Materials.** When required by the Contract or by the Contracting Officer, the Contractor shall obtain the Contracting Officer's approval of the material or articles, which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer full information concerning the material or articles, including, but not limited to the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When directed to do so by the Contracting Officer, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection. All Work under the Contract shall be performed in a skillful and workmanlike manner, unless a higher standard of care is specified. The Contracting Officer may require, in writing, that the Contractor removes from the Work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

**6.02.03. Changes.**

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Contract, including changes:

- (i) In the specifications (including drawings and designs);
- (ii) In the method or manner of performance of the work;
- (iii) In the Government-furnished facilities, equipment, materials, services, or site; or
- (iv) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause, provided, that the Contractor gives the Contracting Officer written notice stating:

- (i) The date, circumstances, and source of the order; and
- (ii) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under the Contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this

clause shall be made for any costs incurred more than twenty (20) days before the Contractor gives written notice as required.

(e) In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(f) The Contractor must assert its right to an adjustment under this clause within thirty (30) days after:

(i) Receipt of a written change order under paragraph (a) of this clause or

(ii) The furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(g) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Contract.

**6.02.04. Errors And Omissions.** Notwithstanding the provision of data supplied by LYNX, the Contractor shall have the responsibility of supplying all details required to make the product or service complete and ready for use although such details may not be specifically mentioned in the specifications. The Contractor shall take no advantage of any apparent error or omission, which he might discover in the plans or specifications, but shall forthwith notify the Contracting Officer of such discovery, who will then make such corrections and interpretations as he deems necessary for reflecting the actual spirit and intent of the plans and specifications.

**6.02.05. Insurance.** The Contractor shall, at all times during the term of the Contract and extended terms thereof, provide and maintain the following types of insurance protecting the interests of LYNX and the Contractor with limits of liability not less than those specified below.

(a) ***Worker's Compensation Insurance:*** Providing statutory benefits as provided under the Workers' Compensation Act of the State of Florida and/or any other state or Federal law or laws applicable to the Contractor's employees performing Work under the Contract.

(b) ***Employers' Liability Insurance:*** With limits of liability of not less than \$100,000 each accident, \$100,000 each employee for disease, and \$500,000 policy limit for disease. This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from LYNX.

(c) ***Commercial General Liability:*** In the following amounts: Bodily Injury and Property Damage \$100,000 each occurrence/\$300,000 general aggregate; \$100,000

products/completed operations aggregate. There shall not be any policy exclusions or limitations for the following coverages: Contractual Liability covering the Contractor's obligations herein; Personal Injury - Medical Payments; Broad Form - Property Damage; Fire Damage; Legal Liability; Liability for Independent Contractors.

(d) ***Comprehensive Automobile Liability:*** Insurance covering all owned or hired and non-owned vehicles used concerning the Work performed under the Contract with limits of liability not less than \$100,000 each person and \$300,000 each accident for bodily injury and \$100,000 each occurrence for property damage or a combined single limit for bodily injury and property damage liability of not less than \$500,000.

(e) ***Certificates of Insurance:*** Before commencing prosecution of the Contract, Contractor shall mail to LYNX Certificates of Insurance satisfactory to LYNX from each insurance company evidencing the insurance as required above is in force, stating policy number(s), dates of expiration and limits of liability thereunder. All copies of policies and Certificates of Insurance submitted to LYNX shall be in form and content acceptable to LYNX.

(f) ***Approval of Forms and Companies:*** An insurance company or companies satisfactory to the Contracting Officer and licensed to do business in Florida shall write all insurance described in the Contract. Insurance shall be in form and content satisfactory to the Contracting Officer. No party subject to the provisions of the Contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. Except as may otherwise specifically be provided herein to the contrary, all policies of insurance which are in any way related to the Work required by the Contract shall be endorsed to LYNX waiving the issuing insurance company's rights of recovery against LYNX whether by way of subrogation or otherwise. All insurance should be provided by insurance companies with a Best's Rating of B+ or better.

(g) ***Additional Insured Endorsement:*** The policy or policies providing Commercial General Liability, Automobile Liability and as required above shall be endorsed to name LYNX, its officers, directors, employees and assigns as Additional Named Insured as respects operations performed by or on behalf of the Contractor in performance of the Contract.

(h) ***Notice of Cancellation or Material Change:*** Policies and/or certificates shall specifically provide a thirty- (30) day notice of cancellation, non-renewal, or material change to be sent to LYNX.

(i) ***Subcontractors:*** If any part of the Work is sublet, the Contractor shall require any and all subcontractors performing Work under the Contract to carry insurance of the type and limits of liability as the Contractor shall deem appropriate and adequate. In the event, a subcontractor is unable to furnish adequate insurance as provided above, the Contractor shall endorse the subcontractor as an Additional Insured. The Contractor shall obtain and furnish to LYNX certificates of insurance evidencing subcontractors' insurance coverage.

(j) ***Multiple Policies:*** A single policy of insurance or a combination of primary, excess or umbrella liability policies as required above may provide the limits of

liability. Nevertheless, in no event shall the total limit of liability for any one occurrence or accident be less than the amount shown above.

(k) **Deductibles:** Companies issuing the insurance policies and the Contractor shall have no recourse against LYNX for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor.

#### **6.02.06. Notice Of Labor Disputes.**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, the Contractor immediately shall give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract under which a labor dispute may delay the timely performance of the Contract, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

### **6.03 PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING TWENTY FIVE THOUSAND DOLLARS (\$25,000)**

**6.03.01. Suspension and Debarment.** The Contract is a "covered transaction" for purposes of 49 C.F.R. Part 29. As such, Contractor is required to verify that none of the Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945. Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29, Subpart C in any lower tier covered transaction it enters into. Contractor certifies as follows:

(a) The certification in this clause is a material representation of fact relied upon by LYNX.

(b) If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to LYNX, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(c) The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while its offer is valid and throughout the period of any contract that may arise from its offer.

(d) The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**6.04 PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS (\$100,000)**

**6.04.01. Bonding.**

(a) ***Bid Bond Requirements (Construction).***

(i) A Bid Bond must be issued by a fully qualified surety company acceptable to LYNX and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.

(ii) To the extent a defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check shall prove inadequate to fully recompense LYNX for the damages occasioned by default, then such bidder agrees to indemnify LYNX and pay over to LYNX the difference between the bid security and LYNX's total damages, so as to make LYNX whole.

(b) ***Advance Payment Bonding Requirements.*** The Contractor may be required to obtain an advance payment bond if the Contract contains an advance payment provision and a performance bond is not furnished. LYNX shall determine the amount of the advance payment bond necessary to protect LYNX.

(c) ***Patent Infringement Bonding Requirements (Patent Indemnity.)*** The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. LYNX shall determine the amount of the patent indemnity to protect LYNX.

(d) ***Performance and Payment Bonding Requirements (Construction).*** The Contractor shall be required to obtain performance and payment bonds as follows:

(i) Performance bonds

(A) The penal amount of performance bonds shall be 100 percent of the original Contract price, unless LYNX determines that a lesser amount would be adequate for the protection of LYNX.

LYNX may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. LYNX may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(ii) Payment bonds

(A) The penal amount of the payment bonds shall equal:

(1) Fifty percent of the Contract price if the Contract price is not more than \$1 million.

(2) Forty percent of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or

(3) Two and one half million if the Contract price is more than \$5 million.

If the original Contract price is \$5 million or less, LYNX may require additional protection as required by subparagraph (d)(ii)(A) if the Contract price is increased.

(e) ***Performance and Payment Bonding Requirements (Non-Construction).***

The Contractor may be required to obtain performance and payment bonds when necessary to protect LYNX's interest.

(i) The following situations may warrant a performance bond:

(A) LYNX property or funds are to be provided to the Contractor for use in performing the Contract or as partial compensation (as in retention of salvaged material).

(B) A Contractor sells assets to or merges with another concern, and LYNX, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(C) Substantial progress payments are made before delivery of end items starts.

(D) Contracts are for dismantling, demolition, or removal of improvements.

(ii) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

(A) The penal amount of performance bonds shall be 100 percent of the original Contract price, unless LYNX determines that a lesser amount would be adequate for the protection of LYNX.

LYNX may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. LYNX may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(iii) A payment bond is required only when a performance bond is required, and if the use of payment bond is in LYNX's interest.



(iv) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

(A) The penal amount of payment bonds shall equal:

(1) Fifty percent of the Contract price if the Contract price is not more than \$1 million;

(2) Forty percent of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or

(3) Two and one half million if the Contract price is increased.

(f) ***Warranty of the Work and Maintenance Bonds.***

(i) The Contractor warrants to LYNX, the Architect and/or Engineer that all materials and equipment furnished under the Contract will be of highest quality and new unless otherwise specified by LYNX, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(ii) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by LYNX and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to LYNX. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to LYNX written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for the Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract SUM, as adjusted (if at all).

**6.04.02. Claims for Damages.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**6.04.03. Clean Air and Clean Water.** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended,

42 U.S.C. §§ 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to LYNX and understands and agrees that LYNX will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**6.04.04. Contract Work Hours and Safety Standards.** The following provisions shall apply with respect to all U.S. federal government financed contracts and subcontracts in excess of \$100,000, involving employment of laborers or mechanics, including watchmen and guards, provided, however, that these provisions shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market.

(a) ***Overtime requirements.*** No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) ***Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) ***Withholding for unpaid wages and liquidated damages.*** LYNX shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Contractor or subcontractor under any such Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) ***Subcontracts.*** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

(e) **Record Keeping Requirements.** The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of LYNX and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**6.04.05. Disputes.** Disputes arising in the performance of the Contract which are not resolved by agreement of the parties shall be decided in writing by the Executive Director of LYNX. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

**6.04.06. Lobbying.** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to LYNX.

**6.04.07. Performance During Dispute.** Unless otherwise directed by LYNX, Contractor shall continue performance under the Contract while matters in dispute are being resolved.

**6.04.08. Rights and Remedies.** Unless the Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between LYNX and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Orange County, Florida. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by LYNX or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **6.05 PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING FIVE HUNDRED THOUSAND DOLLARS (\$500,000)**

**6.05.01. Notification of Federal Participation.** Contractor agrees to provide notification to LYNX specifying the amount of Federal assistance intended to be used to finance the acquisition of goods or services (including construction services) having an aggregate value of \$500,000 or more, and to express the amount of that Federal assistance as a percentage of the total cost of the Contract.

## **6.06 PROVISIONS RELATING TO ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS**

**6.06.01. Seismic Safety.** Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**6.06.02. Special Termination Provisions.** LYNX may terminate the Contract in whole or in part, for the convenience of LYNX or because of the failure of the Contractor to fulfill the Contract obligations. LYNX shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing the Contract, whether completed or in process. If the termination is for the convenience of LYNX, the Contracting Officer shall make an equitable adjustment in the Contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the Contract obligations, LYNX may complete the Work by Contract or otherwise and the Contractor shall be liable for any additional cost incurred by LYNX. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LYNX.

## **6.07 PROVISIONS RELATING TO CONSTRUCTION CONTRACTS**

**6.07.01. Buy America.** The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Contractor must submit to LYNX a Buy America certification with respect to all FTA-funded contracts, except those subject to a general waiver.

**6.07.02. Cargo Preference - Use of United States-Flag Vessels.** Contractor agrees:

(a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(b) To furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LYNX (through the Contractor in the case of a subcontractor's bill-of-lading.); and

(c) To include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**6.07.03. Cleaning Up.** The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the Work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of LYNX. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

**6.07.04. Continuing The Work.** The Contractor shall carry on the Work and maintain the progress schedule during all disputes or disagreements with LYNX. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and LYNX may otherwise agree in writing. Suspension of the Work by the Contractor during any dispute or disagreement with LYNX shall entitle LYNX to terminate the Contract for cause, except as otherwise provided in the General Provisions. This section supersedes other sections concerning continuing work.

**6.07.05. Cooperation Of Contractor.** The Contractor will be supplied with three (3) copies each of the plans and specifications. Contractor shall have available on the work site at all times one copy each of the plans and specifications. The Contractor, for the cost of reproduction, may obtain additional copies of plans and specifications. The Contractor shall give constant attention to the Work to facilitate the progress thereof, and he shall cooperate with the Project Manager and any inspectors and with other contractors in every way possible. The Project Manager shall allocate the Work and designate the sequence of construction in case of controversy between contractors. The Contractor shall have a competent superintendent on the work site at all, times who is fully authorized as his agent. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the Project Manager or his authorized representative.

**6.07.06. Davis-Bacon and Copeland Anti-Kickback Acts.** With respect to all construction contracts and subcontracts over two thousand dollars (\$2,000) at least partly financed by a loan or grant from the Federal Government, and including contracts for actual construction, alteration and/or repair, including painting and decorating, the following provisions shall apply.

(a) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(ii)(B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage

determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The Work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a



determination with 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(v)(B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

(b) **Withholding.** LYNX shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under the Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, LYNX may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification

of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to LYNX for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c)(i)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview

employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(d) Apprentices and trainees

(i) ***Apprentices.*** Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

(e) **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in the Contract.

(f) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 C.F.R. 5.5.

(g) **Contract termination: debarment.** A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(h) ***Compliance with Davis-Bacon and Related Act requirements.*** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.

(i) ***Disputes concerning labor standards.*** Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) ***Certification of eligibility.***

(i) By entering into the Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(ii) No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**6.07.07. Differing Site Conditions.**

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of: (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract; or (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in the Contract. The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under the Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly.

(b) No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under the Contract.

**6.07.08. Layout Of Work.** The Contractor shall lay out its Work from base lines and benchmarks indicated on the drawings, and shall be responsible for all measurements concerning the layout. The Contractor shall furnish, at its own expense, all stakes, templates,

platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated by the Project Manager. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Project Manager until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Project Manager may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

**6.07.09. Maintenance During Construction.** The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective Work prosecuted day by day, with adequate equipment and forces so that the Work is maintained in satisfactory condition at all times. All costs of maintenance Work during construction and before the project is accepted shall be included in the unit prices bid on the various Contract items, and the Contractor will not be paid an additional amount for such work. Should the Contractor at any time fail to maintain the work, the Project Manager shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists. Should the Contractor fail to respond to the Project Manager's notification, the Project Manager may suspend any Work necessary for LYNX to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by LYNX shall be deducted from monies due or to become due the Contractor.

**6.07.10. Occupational Safety and Health ("OSHA").** Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(a) The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a Contract for construction, alteration or repair. A person who undertakes to perform a portion of a Contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the Work in question involves the performance of construction Work and is to be performed:

- (i) directly on or near the construction site, or
- (ii) for the specific project on a customized basis.

Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the Work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor" for the purposes of this section. The

requirements of this section do not apply to Contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

**6.07.11. Operations And Storage Areas.** (a) The Contractor shall confine all operations (including storage of materials) on LYNX premises to areas authorized or approved by the Project Manager. The Contractor shall hold and save LYNX, its officers, agents, free, and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the prior written approval of the Project Manager and shall be built with labor and materials furnished by the Contractor without expense to LYNX. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor upon completion of the work. With the written consent of the Project Manager, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Project Manager, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Project Manager. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

**6.07.12. Protection Of Vegetation, Structures, Equipment & Utilities.** The Contractor shall preserve and protect all existing structures, equipment, and vegetation (such as trees, shrubs, and grass), on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the Work required under the Contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Project Manager. The Contractor shall protect from damage all existing improvements and utilities at or near the work site, and on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Project Manager may have the necessary Work performed and charge the cost to the Contractor.

**6.07.13. Safety.** Contractor agrees to provide appropriate safety barricades, signs, and signal lights; comply with the standards issued by the Secretary of Labor at 29 C.F.R. Part 1926 and 29 C.F.R. Part 1910; and ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

**6.07.14. Schedules For Construction Contracts.** (a) The Contractor shall, within five days after the Work commences on the Contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work. The Contractor will supply the dates on which the Contractor contemplates starting and completing the several salient features of the Work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to LYNX. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause, shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of the Contract.

**6.07.15. Seismic Safety.** Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**6.07.16. Special Termination for Default Provisions.** If the Contractor refuses or fails to prosecute the Work or any separable part, with the diligence that will ensure its completion within the time specified in the Contract or any extension or fails to complete the Work within this time, or if the Contractor fails to comply with any other provisions of the Contract, LYNX may terminate the Contract for default. LYNX shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, LYNX may take over the Work and complete it by Contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to LYNX resulting from the



Contractor's refusal or failure to complete the Work within specified time, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by LYNX in completing the work. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

(a) the delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of LYNX, acts of another Contractor in the performance of a Contract with LYNX, epidemics, quarantine restrictions, strikes, freight embargoes; and

(b) the Contractor, within ten (10) days from the beginning of any delay, notifies LYNX in writing of the causes of delay. If in the judgment of LYNX, the delay is excusable, the time for completing the Work shall be extended. The judgment of LYNX shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses, if applicable.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**6.07.17. Specifications And Drawings.** (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Project Manager access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean "Approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean, "provide complete in place," that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to LYNX by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction Contract, showing in detail the proposed fabrication and assembly of structural elements, and the installation (i.e., fit,

and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Contract. LYNX may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract.

(e) If the Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate LYNX's reasons therefor. Any Work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate Contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four (4) copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three (3) sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. Upon completing the Work under the Contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

#### **6.07.18. Suspension Of Work.**

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of the Contract for the period of time that the Contracting Officer determines appropriate for the convenience of LYNX.

(b) If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted:

(i) By an act of the Contracting Officer in the administration of the Contract, or

(ii) By the Contracting Officer's failure to act within the time specified in the Contract (or within a reasonable time if not specified),

an adjustment shall be made for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of the Contract.

(c) A claim under this clause shall not be allowed for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved. Nevertheless, this requirement shall not apply as to a claim resulting from a suspension order unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

**6.07.19. Use And Possession Prior To Completion.** (a) LYNX shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that LYNX intends to take possession of or use. However, failure of the Contracting Officer to list any item of Work shall not relieve the Contractor's responsibility for complying with the Contract terms. The Government's possession or use shall not be deemed an acceptance of any Work under the Contract.

(b) While LYNX has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from LYNX's possession or use. If prior possession or use by LYNX delays the progress of the Work or causes additional expense to the Contractor an equitable adjustment shall be made in the Contract price or the time of completion, and the Contract shall be modified in writing accordingly.

**6.07.20. Utilities.** Contractor shall be responsible for all utilities that are necessary to perform the Work required by the Contract.

## **6.08 PROVISIONS RELATING TO INTELLIGENT TRANSPORTATION SYSTEMS PROJECTS**

**6.08.01. Conformance with ITS National Architecture.** With respect to all Contracts involving the provision of Intelligent Transportation Systems ("ITS"), Contractor agrees to conform to the ITS National Architecture, as promulgated by the United States Department of Transportation, Intelligent Transportation Systems, Joint Program Office.

## **6.09 PROVISIONS RELATING TO MATERIALS AND SUPPLIES CONTRACTS**

**6.09.01. Buy America.** The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for

15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Contractor must submit to LYNX a Buy America certification on FTA-funded contracts, except those subject to a general waiver.

**6.09.02. Cargo Preference - Use of United States-Flag Vessels.** Contractor agrees:

(a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(b) To furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LYNX (through the Contractor in the case of a subcontractor's bill-of-lading.); and

(c) To include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**6.09.03. Certificate Of Conformance.** (a) When authorized in writing by the Contracting Officer, the Contractor shall ship any supplies for which the Contract would otherwise require inspection at source with a Certificate of Conformance certifying that the supplies or services are of the quality specified and conform in all respects with the Contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and certifying the quantity provided. Shipments of such supplies will not be made under the Contract until use of the Certificate of Conformance has been authorized in writing by the Contracting Officer or inspection and acceptance have occurred.

(b) The executed Certificate of Conformance shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office. In addition, a copy of the executed Certificate of Conformance shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) LYNX has the right to inspect supplies even though a Certificate of Conformance has been provided and to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

## **6.10 PROVISIONS RELATING TO OPERATIONS/ MANAGEMENT CONTRACTS**

**6.10.01. Charter Service Operations.** The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. Contractor agrees to include provisions to this effect in to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve charter service operations.

**6.10.02. Drug and Alcohol Testing.** The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or LYNX, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before October 31st of each year and to submit the Management Information System (MIS) reports before January 1st of each year to LYNX Director of Risk Management, 445 W. Amelia Street, Suite 800, Orlando, FL 32801. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**6.10.03. School Bus Operations.** Contractor agrees to comply with 69 U.S.C. 5323(f) and 49 C.F.R. Part 605, which provide that recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, Contractor agrees not to use federally funded equipment, vehicles, or facilities. Contractor agrees to include provisions to this effect in to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve school bus operations.

**6.10.04. Transit Employee Protective Provisions.** With respect to Contracts for "transit operations" as classified by the FTA, and performed by employees of a Contractor recognized by FTA to be a transit operator, the Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) **General Transit Employee Protective Requirements.** To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations Work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under the Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any

amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. Department Of Labor to FTA applicable to LYNX's project from which Federal assistance is provided to support Work on the underlying Contract. The Contractor agrees to carry out that Work in compliance with the conditions stated in that U.S. Department Of Labor letter. The requirements of this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this Section.

(b) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for LYNX, the Contractor agrees to carry out the Work in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. Department of Labor's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with LYNX. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. Department of Labor letter. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas.* If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. Department of Labor or any revision thereto.

(c) **Requirements Apply to Subcontracts.** The Contractor agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with assistance provided by FTA.

## **6.11 PROVISIONS RELATING TO RESEARCH AND DEVELOPMENT CONTRACTS**

**6.11.01. Patent Rights.** The following requirements apply to each contract involving experimental, developmental, or research work:

(a) **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this Section applies and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, LYNX and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(b) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), LYNX and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(c) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

**6.11.02. Rights in Data.** The following requirements apply to each Contract involving experimental, developmental or research work:

(a) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Section applies:

(i) Except for its own internal use, LYNX or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may LYNX or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(ii) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (b)(ii)(A) and (b)(ii)(B) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

(A) Any subject data developed under that contract, whether or not a copyright has been obtained; and

(B) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(iii) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the Work to participants in that work. Therefore, unless FTA determines otherwise, LYNX and the Contractor performing experimental, developmental, or research Work required by the underlying Contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying Contract, is not completed for any reason whatsoever, all data developed under that Contract shall become subject data as defined in subsection (i) of this clause and shall be delivered as the Federal Government may direct. This subsection (iii), however, does not apply to adaptations of automatic data processing equipment or programs for LYNX or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(iv) Unless prohibited by state law, upon request by the Federal Government, LYNX and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by LYNX or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract. Neither LYNX nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(v) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(vi) Data developed by LYNX or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract to which this Section applies is exempt from the requirements of subsections (ii), (iii), and (iv) of this clause, provided that LYNX or Contractor identifies that data in writing at the time of delivery of the Contract work.



(vii) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

(c) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), LYNX and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(d) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

## **6.12 PROVISIONS RELATING TO ROLLING STOCK PURCHASE CONTRACTS**

**6.12.01. Bus Testing.** Contractor agrees to comply with 49 U.S.C. 5323(c) and FTA's implementing regulation at 49 C.F.R. Part 665 and shall perform the following:

(a) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to LYNX at a point in the procurement process specified by LYNX, which will be before LYNX's final acceptance of the first vehicle.

(b) A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.

(c) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report. This must be provided to LYNX before LYNX's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

(d) If the manufacturer represents that the vehicle is "grandfathered" (used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

(e) Contractor shall provide a certification of compliance with FTA bus testing requirements on such form as may be required by LYNX.

**6.12.02. Buy America.** Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor agrees to submit to LYNX a Buy America certification on FTA-funded contracts, except those subject to a general waiver.

**6.12.03. Cargo Preference - Use of United States-Flag Vessels.** Contractor agrees:

(a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(b) To furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LYNX (through the Contractor in the case of a subcontractor's bill-of-lading.); and

(c) To include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**6.12.04. Pre-Award and Post Delivery Audit Requirements.** Contractor agrees to comply with 49 U.S.C. 5323(1) and FTA's implementation regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(a) **Buy America Requirements.** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with the Buy America requirements. If the Contractor certifies compliance with the Buy America requirements, it shall submit documentation which lists (i) component and subcomponent parts of the rolling stock to be purchased, identified by manufacturer of the parts, their country of origin and costs; and (ii) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(b) **Solicitation Specification Requirements.** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(c) *Federal Motor Vehicle Safety Standards ("FMVSS")*. The Contractor shall submit (i) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (ii) manufacturer's certified statement that the Contracted buses will not be subject to FMVSS regulations.

### **6.13 DEFINITIONS.**

Except as otherwise expressly provided, the terms defined in this section have the meanings assigned to them in this section and the words "herein," "hereof," and "hereunder," and similar words refer to the Contract Documents as a whole and not to any particular document.

(a) "Contract" means the Contract for goods and services between LYNX and the Contractor, of which these General Provisions are incorporated.

(b) "Contractor" means such party as designated in the Contract.

(c) "Contract Documents" means, collectively, the Contract for goods and services between LYNX and the Contractor, these General Provisions, the solicitation by LYNX, the response by the Contractor, and all other documents, instruments and agreements ancillary to and contemplated by these documents.

(d) "Contracting Officer" means such party as designated by LYNX in the Contract.

(e) "FTA" means the Federal Transit Administration.

(f) "LYNX" means the Central Florida Regional Transportation Authority d/b/a LYNX, a body politic and corporate, created by Part II, Chapter 343, Florida Statutes.

(g) "Project Manager" means such party as designated by LYNX in the Contract.

(h) "Work" means the goods and/or services to be provided pursuant to the Contract.