



LYNX GENERAL CONTRACTING PROVISIONS
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A.1 ACCESS TO RECORDS AND REPORTS

The following requirements apply to all contracts utilizing federal funds:

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements of records in accordance with 2 C.F.R. § 200.333. This provision provides that the Contractor shall maintain all books, records, accounts and reports required under the Contract for a period of not less than three (3) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto (if longer than the aforementioned three (3) year period).
- c. Access to Records. The Contractor agrees to provide sufficient access to LYNX, FTA and their respective contractors to inspect and audit records and information related to performance of the Contract as reasonably may be required. Contractor agrees to comply with 49 U.S.C § 5325(g) and allow for the Secretary of Transportation and the Comptroller, or any of their representatives, to have access and the right to examine and inspect all records, documents and papers related to a project for which a grant is made under this chapter. Additionally, if the project is using federal funds, pursuant to 49 C.F.R. Part 633, Contractor shall participate in any requests made by LYNX to assist it in providing a project management plan to FTA as required and provide the FTA administrator or its contractor access to its records and construction sites as stated below in subsection (d), Access to Sites of Performance.
- d. Access to the Sites of Performance. The Contractor agrees to permit LYNX, FTA and their respective contractors access to the sites of performance under the Contract as reasonably may be required.

A.2 BONDING REQUIREMENTS

The following requirements apply to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold established by FTA (currently \$150,000) utilizing federal funds (except that the requirements applicable to Section 255.05 F.S. shall apply regardless of the source of funds and to all contracts and subcontracts exceeding \$100,000).

I. Bid Guarantee

- a. Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to LYNX. The amount of such guaranty shall be equal to five percent of the bid price.
- b. In submitting its bid, it is understood and agreed by bidder that LYNX reserves the right to reject any and all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of 120 days subsequent to the opening of bids, without the written consent of LYNX.
- c. It is also understood and agreed that if bidder should withdraw any part or all of its bid within 120 days after the bid opening without the written consent of LYNX, or refuse or be unable to enter into the Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent LYNX's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.
- d. It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense LYNX for the damages occasioned by default, then the bidder agrees to indemnify LYNX and

pay over to LYNX the difference between the bid guarantee and LYNX's total damages so as to make LYNX whole.

- e. The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

II. Performance Guarantee

- a. A Performance Guarantee in the amount of 100% of the Contract value is required by LYNX to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful bidder shall certify that it will provide the requisite Performance Guarantee to LYNX within ten (10) business days from Contract execution. LYNX requires all Performance Bonds to be provided by a fully qualified surety company acceptable to LYNX and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. LYNX may require additional performance bond protection when the 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 amount of the existing bond or to obtain an additional bond.
- b. If the bidder chooses to provide a Letter of Credit as its Performance Guarantee, the bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the bidder become the Contractor. The bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by LYNX if:
 - 1. A bank in good standing issues it. LYNX will not accept a Letter of Credit from an entity other than a bank.
 - 2. It is in writing and signed by the issuing bank.
 - 3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
 - 4. LYNX is identified as the beneficiary.
 - 5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
 - 6. The effective date of the Letter of Credit is the same as the effective date of the Contract.
 - 7. The expiration date of the Letter of Credit coincides with the term of the Contract.
 - 8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between LYNX and the Contractor and the work stipulated therein.
- c. The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

III. Payment Bonds

A Labor and Materials Payment Bond equal to the full value of the Contract must be furnished by the Contractor to LYNX as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond must be issued by a fully qualified surety company acceptable to LYNX and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

IV. Section 255.05

For all contracts for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public, the Contractor shall furnish before commencing the work or before recommencing the work after a default or abandonment payment and performance bonds satisfying the requirements of Section 255.05, Florida Statutes. The requirement of this subsection shall take precedence over any other requirements set forth herein or elsewhere in the Contract that permit reduced or alternate bonding requirements.

A.3 BUS TESTING

The following requirements apply to contracts for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components utilizing federal funds:

The Contractor agrees to comply with (or cause the manufacturer of the bus to comply with) the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by LYNX.

A.4 BUY AMERICA REQUIREMENTS

The following requirements apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to LYNX utilizing federal funds:

- a. 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 all 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.
- b. The bidder or offeror must submit to LYNX the appropriate Buy America certification with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

A.5 CARGO PREFERENCE REQUIREMENTS

The following requirements apply to all contracts utilizing federal funds involving equipment, materials, or commodities that may be transported by ocean vessels.

The 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 20 working days following the date of loading for shipments originating within the United States or within 30 working 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 the FTA recipient (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.

A.6 CHARTER SERVICE

The following requirements apply to contracts utilizing federal funds for operating public transportation service:

- a. The Contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), 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 as permitted under:
 - 1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
 - 2. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
 - 3. Any other federal Charter Service regulations; or
 - 4. Federal guidance, except as FTA determines otherwise in writing.
- b. The Contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:
 - 1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
 - 2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
 - 3. Any other appropriate remedy that may apply.
- c. The Contractor should also include the substance of the above clauses in each subcontract that may involve operating public transit services.

A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The following requirements apply to each contract and subcontract utilizing federal funds exceeding \$150,000.

The Contractor agrees:

- a. It will not use any violating facilities;
- b. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- c. It will report violations of use of prohibited facilities to FTA; and
- d. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387). Contractor agrees to the comply with all applicable standards, orders, regulations issued pursuant to the above Acts and in accordance with 2 C.F.R Part 200, Appendix II (G).



A.8 CIVIL RIGHTS LAWS AND REGULATIONS

The following requirements apply to all contracts utilizing federal funds:

- a. LYNX is an Equal Opportunity Employer. As such, LYNX agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, LYNX agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.
- b. Under the Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof:
 1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

A.9 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

I. DBE

The following requirements apply to all contracts utilizing federal funds:

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of



the Contract, which may result in the termination of the Contract or such other remedy as LYNX deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

II. Overview

- a. It is the policy of LYNX and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of LYNX to:
 1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
 2. Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
 3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
 4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE’s;
 5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
 6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
 7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.
- b. The Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth therein. These requirements are in addition to all other equal opportunity employment requirements of the Contract. LYNX shall make all determinations with regard to whether or not a bidder/offeror is in compliance with the requirements stated herein. In assessing compliance, LYNX may consider during its review of the bidder/offeror’s submission package, the bidder/offeror’s documented history of non-compliance with DBE requirements on previous contracts with LYNX.

III. Contract Assurance

- a. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as LYNX deems appropriate.
- b. DBE Participation

For the purpose of the Contract, LYNX will accept only DBE’s who are:

1. Certified, at the time of bid opening or proposal evaluation, by the Florida Department of Transportation or the Unified Certification Program (UCP); or

2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by LYNX.

c. DBE Participation Goal

The DBE participation goal for the Contract is set forth in the solicitation. The goal represents those elements of work under the Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than the percentage of the total Contract price as set forth in the solicitation. Failure to meet the stated goal at the time of proposal submission may render the bidder/offeror non-responsive.

d. Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule attached to its proposal or bid without LYNX's prior written consent. LYNX may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify LYNX in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with "Sanctions for Violations" below.

e. Continued Compliance

LYNX shall monitor the Contractor's DBE compliance during the life of the Contract. In the event the Contract term exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to LYNX that summarize the total DBE value for the Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Liaison with copies provided to the Director of Procurement. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful bidder/offeror shall permit:

- LYNX to have access to necessary records to examine information as LYNX deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful bidder/offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of LYNX, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and records of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of the Contract.

- All data/record(s) pertaining to DBE shall be maintained as stated in the solicitation.

f. Sanctions for Violations

If at any time LYNX has reason to believe that the Contractor is in violation of its obligations under the Agreement or has otherwise failed to comply with terms of this Section, LYNX may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

A.10 EMPLOYEE PROTECTIONS

The following requirements, including 49 U.S.C. § 5333(a), 40 U.S.C. § 3141-3148, 29 C.F.R. Part 5, 18 U.S.C § 874, 29 C.F.R part 3, 40 U.S.C. § 3701-3708 and 29 C.F.R. part 1926, apply to all construction related contracts utilizing federal funds:

I. Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

II. Contract Work Hours and Safety Standards

- a. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
- b. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 this clause 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 this clause.

- c. The FTA 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 this section.
- d. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 herein.

III. Contract Work Hours and Safety Standards for Awards Not Involving Construction

- a. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.
- b. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) 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.
- c. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of LYNX, the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
- d. The Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

A.11 ENERGY CONSERVATION

The following requirements apply to all contracts utilizing federal funds:

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act and referenced in 42 U.S.C. 6321 et seq and 49 C.F.R. Part 622, subpart C, requirements for energy assessments on construction of buildings for which FTA assistance applications are submitted after October 1, 1980.

A.12 FLY AMERICA

The following requirements apply to all contracts utilizing federal funds involving the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation:

- a. Definitions. As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- b. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c. If available, the Contractor, in performing work under the Contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property and comply with all provisions of 48 CFR Subpart 47.4, entitled “Air Transportation by U.S. Flag Carriers.”
- d. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- e. The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under the Contract that may involve international air transportation.

A.13 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

The following requirements apply to all contracts utilizing federal funds:

- a. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:
 - 1. Debarred from participation in any federally assisted Award;
 - 2. Suspended from participation in any federally assisted Award;
 - 3. Proposed for debarment from participation in any federally assisted Award;
 - 4. Declared ineligible to participate in any federally assisted Award;

5. Voluntarily excluded from participation in any federally assisted Award; or
6. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- b. The certification in this clause is a material representation of fact relied upon by LYNX. If it is later determined by LYNX that the bidder or proposer 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. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions. The bidder or proposer agrees to comply with 2 C.F.R §200.213, C.F.R. Part 200 Appendix II(I), Executive Order 12549 & 12689.

A.14 LOBBYING RESTRICTIONS

Bidders/offerors who bid or apply for contracts or subcontracts of \$100,000 or more at any time funded by a federal grant shall file the certification required by 49 C.F.R. part 20. Such certifications include the following:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder/offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The bidder/offeror shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- d. Lobbying restrictions applicable under 2 C.F.R §200.450, 2 C.F.R Part 200 Appendix II (J) and 49 C.F.R Part 20 relating to funds being used under a federal contract, grant etc. shall file the above certifications and disclosure forms, if required.

A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The following requirements apply to all contracts utilizing federal funds:

LYNX and Contractor acknowledge and 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 by 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, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

A.16 PATENT RIGHTS AND RIGHTS IN DATA

The following requirements apply to any contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work utilizing federal funds:

The project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of the Contract. The Contractor shall grant LYNX intellectual property access and licenses deemed necessary for the work performed under the Agreement and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the FTA or LYNX, until such time as FTA or LYNX 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. For purposes of the Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. 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 below. 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 the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of the Contract 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 the 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 Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees 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 the 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. 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.
4. 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.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt

from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. 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.

A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

The following requirements apply to contracts for the purchase of revenue service rolling stock utilizing federal funds:

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The following requirements apply to all contracts utilizing federal funds:

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 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 project. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the 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.
- b. 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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

The following requirements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator where federal funds are utilized:

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. **U.S. DOL Certification.** Under the Contract or any amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its award, including its award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

3. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

A.20 RECYCLED PRODUCTS

The following requirements apply to all contracts utilizing federal funds where the purchase price of an Environmental Protection Agency item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000:

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247. The Contractor agrees to comply with all requirements governing recycled products and as contained in 42 U.S.C. §6926, 40 C.F.R Part 247 and 2 C.F.R. Part§ 200.322.

A.21 SAFE OPERATION OF MOTOR VEHICLES

The following requirements apply to all contracts utilizing federal funds:

- a. **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or LYNX.

- b. **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

A.22 SCHOOL BUS OPERATIONS

The following requirements apply to all contracts for operating public transportation service utilizing federal funds:

The Contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the Contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under the Contract that may operate public transportation services.

A.23 SEISMIC SAFETY

The following requirements apply to contracts for the construction of new buildings or additions to existing buildings utilizing federal funds:

The 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 (DOT) 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.

A.24 SUBSTANCE ABUSE REQUIREMENTS

The requirements below apply to all contractors who perform safety-sensitive functions where federal funds are used for the contract. Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

The Contractor agrees to comply with all substance abuse requirements as provided for in 49 U.S.C. § 5331, 49 C.F.R. part 655 and 49 C.F.R. part 40. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, 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. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before January 15th and to submit the Management Information System (MIS) reports before February 15th to LYNX. 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. The Contractor agrees further to submit for review and approval before contract execution a copy of its Policy Statement developed to implement its drug and alcohol testing program.

A.25 TERMINATION

The following contract clauses identified in the heading of each as “General” apply to all contracts in excess of \$10,000 utilizing federal funds. Where a heading to a clause indicates that it has specific applicability (i.e., “Professional or Transit Services Contracts”, “Supplies and Service”, etc.), those clauses apply to the specific application so noted in lieu of the corresponding clause identified as “General”. The foregoing notwithstanding, to the extent that termination for convenience, termination for default and cure are addressed in the body of the Contract and such terms are inconsistent with the terms set forth below, the terms set forth in the body of the Contract will control. However, in either scenario, LYNX has the remedies for non-compliance by the Contractor as stated in 2 CFR §200.339 and Contractor must comply with 2 CFR Part 200, Appendix II, Contract provisions for Non-Federal Entity contracts under Federal Awards:

I. Termination for Convenience (General)

LYNX may terminate the Contract, in whole or in part, at any time by written notice to the Contractor when it is in LYNX’s best interest. 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.

II. Termination for Default (General)

If the Contractor does not deliver supplies in accordance with the Contract delivery schedule, or if the Contract is for services, the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any other provisions of the Contract, LYNX may terminate the Contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by LYNX that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, LYNX, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

III. Opportunity to Cure (General)

- a. LYNX, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.
- b. If Contractor fails to remedy to LYNX’s satisfaction the breach or default of any of the terms, covenants, or conditions of the Contract within ten (10) days after receipt by Contractor of written notice from LYNX setting forth the nature of said breach or default, LYNX shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude LYNX from also pursuing all available remedies against Contractor and its sureties for said breach or default.

IV. Waiver of Remedies for any Breach (General)

In the event that LYNX elects to waive its remedies for any breach by Contractor of any covenant, term or condition of the Contract, such waiver by LYNX shall not limit LYNX’s remedies for any succeeding breach of that or of any other covenant, term, or condition of the Contract.

V. Termination for Convenience (Professional or Transit Service Contracts)

LYNX, by written notice, may terminate the Contract, in whole or in part, when it is in LYNX's interest. If the Contract is terminated, LYNX shall be liable only for payment under the payment provisions of the Contract for services rendered before the effective date of termination.

VI. Termination for Default (Supplies and Service)

- a. If the Contractor fails to deliver supplies or to perform the services within the time specified in the Contract or any extension, 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. The Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in the Contract.
- b. 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.

VII. Termination for Default (Transportation Services)

- a. If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in the Contract or any extension, 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 default. The Contractor will only be paid the Contract price for services performed in accordance with the manner of performance set forth in the Contract.
- b. If the Contract is terminated while the Contractor has possession of LYNX goods, the Contractor shall, upon direction of LYNX, protect and preserve the goods until surrendered to LYNX or its agent. The Contractor and LYNX shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.
- c. 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.

VIII. Termination for Default (Construction)

- a. 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 provision 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.
- b. The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:
 1. 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

2. The Contractor, within 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 for the parties, but subject to appeal under the Disputes clause(s) of the Contract.
- c. 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 LYNX.

IX. Termination for Convenience or Default (Architect and Engineering)

- a. LYNX may terminate the Contract in whole or in part, for LYNX's convenience 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 LYNX all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing the Contract, whether completed or in process. LYNX has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.
- b. If the termination is for the convenience of LYNX, LYNX shall make an equitable adjustment in the Contract price but shall allow no anticipated profit on unperformed services.
- c. 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.
- d. 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.

X. Termination for Convenience or Default (Cost-Type Contracts)

- a. LYNX may terminate the Contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of LYNX or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from LYNX, or property supplied to the Contractor by LYNX. If the termination is for default, LYNX may fix the fee, if the Contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to LYNX and the parties shall negotiate the termination settlement to be paid the Contractor.
- b. If the termination is for the convenience of LYNX, the Contractor shall be paid its contract close-out costs, and a fee, if the Contract provided for payment of a fee, in proportion to the work performed up to the time of termination.
- c. If, after serving a Notice of Termination for Default, LYNX determines that the Contractor has an excusable reason for not performing, LYNX, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

A.26 VIOLATION AND BREACH OF CONTRACT

The following requirements apply to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) utilizing federal funds. The foregoing notwithstanding, to the extent that the body of the Contract contains administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide



for sanctions and penalties (as appropriate), the terms set forth in the body of the Contract will control in compliance with 2.C.F.R. Part 200, Appendix II (A), contract provisions for federal awards, and 2 C.F.R. § 200.326 (bonding requirements):

I. Rights and Remedies of LYNX

LYNX shall have the following rights in the event that LYNX deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel the Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

II. Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of the Contract, which may be committed by LYNX, the Contractor expressly agrees that no default, act or omission of LYNX shall constitute a material breach of the Contract, entitling Contractor to cancel or rescind the Contract (unless LYNX directs Contractor to do so) or to suspend or abandon performance.

III. Remedies

Substantial failure of the Contractor to complete the project in accordance with the terms of this Agreement will be a default of the Agreement. In the event of a default, LYNX will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of the Contract by the Contractor before LYNX takes action contemplated herein, LYNX will provide the Contractor with sixty (60) days written notice that LYNX considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

IV. Disputes

Disputes arising in the performance of the Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of LYNX's Chief Executive Officer. 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 Chief Executive Officer. 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 Chief Executive Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

V. Performance during Dispute

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

VI. 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 its employees, agents or others for whose acts it 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.

VII. 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 the Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which LYNX is located.

VIII. Rights and Remedies

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.

A.27 CHANGES TO FEDERAL REQUIREMENTS

The following requirements apply to all contracts utilizing federal funds:

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between LYNX and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to comply shall constitute a material breach of the Contract.

A.28 CONFORMANCE WITH ITS ARCHITECTURE

The following requirements apply to all new technology contracts utilizing federal funds.

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture in compliance with Sec. 5206(e) of TEA-21, 23 USC 502, and FHWA/FTA's "Transportation Equity Act for the 21st Century; Interim Guidance on Conformity with the National Intelligent Transportation Systems (ITS) Architecture and Standards" 63 Federal Register 70443 et seq. Dec. 21, 1998, and other subsequent Federal directives that may be issued.

A.29 ADA ACCESS

The following requirement applies to all contracts for rolling stock or facilities construction / renovation utilizing federal funds:

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

A.30 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or subsequent revisions, 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 this Agreement. 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.



A.31 NOTIFICATION OF FEDERAL PARTICIPATION FOR STATES

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 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 this Agreement. 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.

A.32 NOTICE TO FTA & US. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS

The following requirement applies to all contracts in excess of 25,000 dollars utilizing federal funds.

Disputes, Breaches, Defaults, and Litigation.

- a. FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- b. Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify LYNX as LYNX must notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the LYNX is located. LYNX is required to include this notification requirement in its Third-Party Agreements (subcontractor) and must require each Third Party Participant (Contractor) to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
 1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 2. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 3. Additional Notice to U.S. DOT Inspector General. LYNX must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which LYNX is located, if LYNX has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

This responsibility occurs whether the Project is subject to this Agreement or another agreement between LYNX and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of LYNX. It also applies to subcontractors at any tier.

Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

A.33 VETERANS PREFERENCES

The following requirement is applicable to all construction contracts.

Lynx and its subrecipients (contractor) of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.