

APPENDIX B - FEDERAL CONTRACT PROVISIONS

INCORPORATION OF FTA PROVISIONS

1.1 APPLICABILITY OF FEDERAL GRANT CONTRACT

- A. Contracts for more than the simplified acquisition threshold, currently set by the City of Albany at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. This procurement may be subject to one or more financial assistance contracts between City of Albany and the U.S. Department of Transportation (DOT), which incorporate the current FTA Master Agreement and Circular 4220.1 as amended.
- C. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1, as amended, and the Master Grant Agreement, 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Albany request that would cause City of Albany to be in violation of the FTA terms and conditions.
- D. The FTA Master Agreement obligates City of Albany to incorporate certain provisions into this Contract and any lower tier subcontracts at any level and to take appropriate measures to ensure that Contractor and its lower tier Subcontractors at any level comply with certain applicable requirements set forth in the Master Agreement. The following provisions of the FTA Master Agreement are hereby incorporated by reference into this Contract, and the Contractor shall comply with all such requirements.
- E. 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 Master Agreement between City of Albany and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
- F. Copies of the FTA Circular 4220.1, as amended, and the Master Grant Agreement are available from City of Albany.

1.2 FEDERAL FUNDING LIMITATION

The Contractor understands that a portion of the funds to pay for the Contractor's performance under this Contract are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All such funds must be approved and administered by FTA. City of Albany's obligation hereunder is, in part, payable from funds that are appropriated and allocated by FTA for the performance of this Contract. If such funds are not allocated, or ultimately are disapproved by FTA, City of Albany may be required to terminate or suspend the Contractor's services. In such event, the Contract may at City of Albany's option be terminated for convenience in accordance with these General Conditions.

1.3 NO OBLIGATION BY THE FEDERAL GOVERNMENT

- A. Notwithstanding that the Federal Government may have concurred in or approved the solicitation for this Contract, the Federal Government is not a party to this Contract and has no obligations or liabilities to any entity other than City of Albany, including the Contractor and its Subcontractors and Suppliers at any tier.
- B. The Contractor agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provision.

1.4 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

- A. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- B. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- C. A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- D. By signing and submitting its Bid, the Bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by City of Albany. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to remedies available to City of Albany, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1.5 FEDERAL LOBBYING RESTRICTIONS

- A. This Contract is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. Contractors and Subcontractors at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR 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 any 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 the recipient.
- C. The Contractor shall submit the "Certification Regarding Lobbying," included in the Bid documents. The Contractor's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such Subcontractors shall certify and disclose accordingly. City of Albany is responsible for keeping the certification form of the Contractor, who is in turn responsible for keeping the certification forms of Subcontractors. Further, by executing the Contract, the Contractor agrees to comply with these laws and regulations.
- D. If the Contractor has engaged in any lobbying activities to influence or attempt to influence the awarding of this Contract, the Contractor must disclose these activities. In such a case, the Contractor shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities." City of Albany must also receive all disclosure forms.

- E. The Contractor and any Subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:
1. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Contract; or
 2. A change in the person(s) influencing or attempting to influence this federally funded Contract; or
 3. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Contract.

1.6 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- 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 this Contract. Upon execution of the underlying 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 underlying contract or the FTA-assisted project for which this 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. § 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.
- 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.

1.7 ANTI-KICKBACK

- A. City of Albany and contractors are required to comply with the Copeland "Anti-Kickback" Act, 18 USC § 874 and 40 USC § 276(c), as supplemented in U.S. Department of Labor regulations, 29 CFR Part 3. Under state and federal law, it is a violation for City of Albany employees, proposers, bidders, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.
- B. "Kick-Back" as defined by Federal Acquisition Regulations (FAR), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

1.8 CIVIL RIGHTS

In addition to the provisions in Section 00 73 39 00, Diversity Program Provisions, the following requirements pertaining to nondiscrimination and civil rights apply to the underlying contract:

- A. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of

1990, 42 U.S.C. § 12132, Executive Order 11246 as amended, and 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, creed, national origin, sex, gender identity, status as a parent, marital status, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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) regulation, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

As required by 41 CFR 60-1.4, during the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, gender identity, status as a parent, marital status, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment, advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, marital status or national origin.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his or her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the portion of the sentence immediately preceding paragraph 1.a and the provisions of paragraphs 1.a through 1.f in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- h. The Contractor and its Subcontractors shall include the equal employment opportunity clause set forth in paragraph 1.a above in each of their non-exempt Subcontracts.

2. Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 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.

3. Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the "Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Federal Equal Employment Opportunity Requirements

As required by 41 CFR 60-4.2, the Contractor shall take into account the following provisions in performing the Work:

- a. The Contractor shall comply with the Federal Equal Employment Opportunity (EEO) Requirements.
- b. The goals for minority and female participation are expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the

goals for both its federally involved and non- federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- c. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) Business Days of award of any construction Subcontract in excess of \$10,000 at any tier for construction work under this Contract. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed.
- d. As used in this Notice, and in this Contract, the "covered area" is Linn and Benton Counties of the State of Oregon.

5. EEO Construction Contract Specifications

As required by 41 CFR 60-4.3, the Contractor shall comply with the following:

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

- a. As used in these specifications:
 - (1) "Covered area" is Linn and Benton Counties for the State of Oregon.
 - (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - (4) "Minorities" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
- b. Whenever the Contractor, or any Subcontractor at any tier subcontracts a portion of the

Work involving any construction trade, it shall physically include in each Subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation, and which are set forth in this Contract.

- c. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- d. The Contractor shall implement the specific affirmative action standards provided in paragraphs g(1) through g(16) below. The goals set forth in this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- e. Neither the provisions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- f. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- g. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or

female individuals working at such sites or in such facilities.

- (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- (3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor minority persons or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under g(2) above.
- (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the new media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipate doing business.
- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month

prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - (14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (15) Document and maintain a record of all solicitations of offers for subcontract from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- h. The Contractor is encouraged to participate in voluntary associations which assist in fulfilling one or more of its affirmative action obligations (paragraphs g(1) through g(16) above). The efforts of a contractor association, joint contractor- union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under g(1) through g(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- i. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved

its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- j. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
- k. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- l. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- m. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph g of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- n. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- o. Nothing herein provided shall be construed as limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

6. The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

C. Flow Down

The Civil Rights requirements flow down to the Contractor and its subcontractors at every tier.

1.9 BUY AMERICA REQUIREMENTS

A. The Contractor agrees to comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661, which provide that federal fund 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 the FTA or the product is subject to a general waiver. General Waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out in section 165(b)(3), of the Surface Transportation Assistance Act of 1982 and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

- B. A bidder or offeror must submit to City of Albany the appropriate Buy America certification, attached herein, with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors
- C. Whether or not a Bidder certifies that it will comply with the applicable requirement, Bidder will be bound by its original certification and is not permitted to change its certification after the time that the Bid is submitted, except for clerical error. A Bidder that certifies that it will comply with the applicable Buy America requirements may not change its certification at any point and is not eligible for waiver of those requirements. (Buy America Regulations, 49 CFR Part 661.13(c))
- D. If the Bidder is unable to certify compliance but believes that it may qualify for an exception to the requirement consistent with section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, City of Albany, on behalf of the Bidder, will tender the request for exception(s) to FTA for review and approval. City of Albany does not warrant that any such request will be acted upon in accordance with the Bidder's time frame. Failure to achieve an exception will not relieve the Bidder of its responsibilities under this Section.

1.10 CARGO PREFERENCE

Pursuant to 46 CFR Part 381, the Contractor agrees:

- A. To utilize 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, materials, or commodities pursuant to this 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) 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 shipment originating outside the United States, a legible copy of a rated, commercial ocean bill of lading in English for each shipment of cargo described in paragraph A above to City of Albany (through the prime Contractor in the case of Subcontractor bills of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street SW, Washington, D.C. 20590, marked with appropriate identification of the Project.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.
- D. The Contractor must properly execute and submit the "Cargo Preference Certificate" to the City, if applicable, as they apply to the procurement. Contractor should contact City for Documentation.

1.11 FLY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 40018 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR 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 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.

1.12 RECOVERED MATERIALS

- A. 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), and 2 CFR § 200.323, including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247.

- B. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- C. These requirements flow down to all Contractor and Subcontractor tiers.

1.13 ENERGY CONSERVATION

- A. 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.
- B. These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their sub-agreements at every tier.

1.14 CLEAN WATER

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to City of Albany and understands and agrees that City of Albany will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. 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.

1.15 CLEAN AIR

- A. 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. The Contractor agrees to report each violation to City of Albany and understands and agrees that City of Albany will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. 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.

1.16 MIGRATORY BIRD TREATY ACT

The Contractor shall comply with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. Sections 703-712, 50 C.F.R. Section 10.13 and all amendments, which makes it illegal for anyone to take, possess, import, export, transport, sell, or offer for sale, purchase, or barter, any migratory bird, or other parts, nests, or eggs of such a bird except unless and except as permitted by regulations or under the terms of a valid permit issued by the Secretary of the Interior.

1.17 SEISMIC SAFETY

The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR 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 this 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.

1.18 ELECTRONIC AND INFORMATION TECHNOLOGY

When providing reports or other information to City of Albany, or to the Federal Transit Administration (FTA), among others, on behalf of City of Albany, the Contractor agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

1.19 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

In addition to the Disadvantaged Business Enterprise Program provisions set forth in Section 00 733 39, the Contractor shall comply with the following requirements:

A. As a recipient of financial assistance from the federal Department of Transportation (DOT), through the Federal Transit Administration (FTA), and in accordance with 49 Code of Federal Regulations (CFR) Part 26 the City of Albany requires Contractors to provide opportunities for Disadvantaged Business Enterprises to perform Work. The Contractor shall review and comply with applicable provisions in 49 CFR Part 26 and Section 00 73 39 of this Contract. The State of Oregon maintains a certified DBE list at [COBID Certification Management System \(diversitysoftware.com\)](http://COBID Certification Management System (diversitysoftware.com)) which the City provides to Contractors for DBE participation and opportunity notifications.

B. The Contractor shall comply with the following assurance:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as City of Albany deems appropriate.

C. The Contractor shall include in each Subcontract it awards pursuant to this Contract the following assurance:

“The subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this subcontract. The subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the subcontractor to carry out these requirements is a material breach of this subcontract, which may result in the termination of this subcontract or such other remedy as the Contractor or City of Albany deems appropriate.”

1.20 NO TEXTING WHILE DRIVING

A. Contractor shall comply with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009. Contractor shall:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving;
2. Contractor-owned or Contractor-rented vehicles or Government-owned, leased or rented vehicles;
3. Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
4. Any vehicle, on or off duty, and using an employer supplied electronic device.
5. Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

B. "Driving" is defined as operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

C. "Text Messaging" is defined as reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or

electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

D. Contractor shall include this provision in all subcontracts at all tiers.

1.21 PROHIBITED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

Contractor shall comply with the requirements 2 CFR Section 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, and the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115- 232, § 889 (Aug. 13, 2018), which prohibits FTA from obligating or expending grant funds to acquire “covered telecommunications equipment or services” from companies based in the People’s Republic of China after August 13, 2020.

1.22 DAVIS-BACON ACT

Contractor shall comply with the Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, Contractor must be required to 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, Contractors must be required to pay wages not less than once a week. The City provides a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

1.23 SYSTEM FOR AWARD MANAGEMENT

Contractor must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. Contractor must also comply with applicable restrictions on subawards ("subgrants") to first tier subrecipients (**first tier "subgrantees"**), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.

1.24 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer 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 must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

1.25 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR 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 the awarding agency

1.26 AUDIT REQUIREMENTS

Contractor must comply with 2 CFR §200.501 (Subpart F) and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.

1. If Contractor expends federal awards in excess of \$750,000 in a fiscal year, contractor is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to City within 30 days of completion.
2. Contractor must save, protect, and hold harmless City from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Contract. Contractor acknowledges and agrees that any audit costs incurred by Contractor as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Contractor and State.

1.27 WHISTLEBLOWER PROTECTION ACT

Contractor must comply, and ensure the compliance by subcontractors or subgrantees, with 41U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Contractor must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.

1.28 CONFLICT OF INTEREST

Contractor will prohibit any employee, governing body, subcontractor, or organization from participating if the employee or entity has an actual or potential conflict of interest with regards to funds provided under this agreement. Contractor must disclose in a timely manner and in writing to the City all violations of Federal criminal law involving fraud, bribery, or gratuity potentially affecting funds provided under the agreement.

1.29 DOMESTIC PREFERENCES FOR PROCUREMENT

2 CFR § 200.322 requires that as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products lumber.