

Community Equity and Inclusion Plan

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PREAMBLE

Whereas, the City of Portland (“Owner”) desires to provide for the efficient, safe, quality, and timely completion of the construction of the [*INSERT PROJECT SPECIFIC NAME HERE*] (“Project”) in a manner designed to afford the lowest reasonable costs to the Owner, and the public it represents, and the advancement of public policy objectives;

Whereas, the Owner recognizes that historical disparity exists in the construction industry which has prevented equity in construction contracting opportunities for minorities and women;

Whereas, the Owner has engaged in efforts to address historical disparity and to assist small businesses including implementing the Community Benefits Agreement on pilot projects and evaluating the results and community feedback on that effort;

Whereas, the Owner recognizes that, as a public owner, it has a unique role in the construction industry to ensure that public dollars spent benefit the community that it serves and does not indirectly or passively perpetuate discrimination against or historical under-inclusion of minorities and women and low income people in the construction industry;

Whereas, the Owner is entitled to retain and exercise full and exclusive authority for the management of its operations, and shall remain the sole judge in determining the competency and qualifications of all firms working in support of the Project, including all prime Contractors and Subcontractors, with the corresponding right to hire or reject such potential contractors on its public works projects;

Whereas, the Owner recognizes that it and its Contractor will play an integral and critical role in ensuring that the Project diversity, apprenticeship, local investment, and inclusivity objectives are met;

Whereas, the Community Equity and Inclusion Plan (the “Plan”) is intended to have a positive impact and exemplify the Owner’s commitment to help grow both the demand for and capacity of disadvantaged, minority-owned, women-owned, and emerging small businesses (“D/M/W/ESB”);

Whereas, the Owner has determined that City construction contracts using the alternative contracting method with an estimated contract value above \$10 million may be subject to the Plan;

Whereas, the Owner recognizes that in order to equalize opportunities for contracting on City projects, the participation of contractors and workers need to be carefully tracked through disaggregated data and reviewed in real-time by a collaboration of industry and community partners to assist with compliance;

Whereas, the Owner has established an independent body, the Community Equity and Inclusion Committee (“CEIC”), to review the performance of City projects subject to the Plan, provide guidance and advice to Contractors to increase utilization, and advise the City on the Contractor’s and Subcontractors’ Equity Efforts to achieve Plan goals;

Whereas, the Owner will dedicate funds from this Project to the Community Opportunities and Enhancements Fund (“COEF”), which provides resources for opportunities and enhancements and to create means by which to build community capacity and/or create economic opportunities for people of color, women, economically disadvantaged individuals and local contractors and organizations;

Whereas, in order to conserve resources and to provide focused attention to obtaining equity in the Work performed on the Project under this Plan, the handling of the COEF funds will be addressed through a separate program which may include, but is not limited to, funding for capacity building, technical assistance, workforce training, and apprenticeship opportunities; and

Whereas, all City projects for construction services benefit from ongoing City investments in workforce training, contractor development, technical assistance, and apprenticeship and pre-apprenticeship programs; and

NOW, THEREFORE, IT IS AGREED AS SET FORTH BELOW:

DEFINITIONS

Community Based Organizations (“CBO”) means public or private nonprofit entity that is representative of a community or a significant segment of a community, and is engaged in addressing and meeting common needs identified by that community. This includes, but is not limited to, Pre-Apprenticeship Programs and organizations who represent women and specific ethnic and racial minority groups.

Community Equity and Inclusion Committee (“CEIC”) means the independent body, established through the Partnership Agreement, to review the performance of City construction contracts subject to the Plan, provide guidance and advice to Contractors to increase utilization, and advise the City on the Contractor’s and Subcontractors’ Equity Efforts to achieve Plan goals.

Community Equity and Inclusion Partnership Agreement (“Partnership Agreement”) means the agreement, attached to this Plan as Exhibit A, between the City of Portland, community-based member organizations, contracting trade organizations, building trades (both union and non-union) and training/pipeline providers (pre-apprenticeship and apprenticeship programs) describing and committing support for the diversity goals and efforts of the CEIP, including the Community Apprenticeship requirements, Community Workforce and Recruitment goals, and Subcontracting goals, and describing and committing support for the independent Community Equity and Inclusion Committee.

Contract means the written agreement setting forth the obligations between parties for the performance of Work or to supply materials for the Project, including the agreements between the Owner and the Contractor, between the Contractor and any Subcontractor or Supplier, and between Subcontractors at any tier.

Contract Compliance Specialist means the person identified by the Owner as having authority to determine whether the Contractor and/or Subcontractors are in compliance with the Plan.

Contractor means an entity or person that has entered into the Contract directly with the Owner for all of the Work required for the Project.

Disadvantaged Business Enterprise (“DBE”) means a for-profit small business entity where socially and economically disadvantaged individuals own at least 51% interest and also control management and daily business operations. A DBE must be properly certified within the State of Oregon.

Emerging Small Business Enterprise (“ESB”) means, for purposes of this Plan, only those firms certified as an ESB by the Oregon State Certification Office of Business Inclusion and Diversity (“COBID”).

Equal Employment Opportunity (“EEO”) means the policies and procedures of the organization to ensure non-discrimination for all employees, especially women, minorities, and persons with disabilities. All contract provisions require non-discrimination in employment by contractors, subcontractors and sub-consultants.

Equity Efforts is defined as the exercise and fulfillment of the obligations set forth in the Requirements section of each Article below, free from any intention or effort to avoid such obligations. The requirement of Equity Efforts shall also include the obligation to take all objective and verifiable steps outlined in the strategies of this Plan.

Fiscal Year runs from July 1 through June 30.

Hard Construction Costs means the cost to build improvements on a property that are reimbursable to the Contractor under the Contract, including all related construction labor and materials, and fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as fees, insurance, overhead, administration, taxes, or other professional services shall not be considered as part of the Hard Construction Costs. Costs related to Specialty Work shall not be included in Hard Construction Costs unless assessment shows that there is availability and capacity of D/M/W/ESB firms to perform such specialty work.

Minority Owned Business Enterprise (“MBE”) for purposes of the Plan means only those firms certified as a minority owned business by the Oregon State Certification Office of Business Inclusion and Diversity (“COBID”).

Owner means the City of Portland.

Partnership Agreement means the Community Equity and Inclusion Partnership Agreement defined above.

Specialty Work means a scope of work for the Project that requires a Contractor or Subcontractor with unique, specialized skills and/or equipment to perform that scope of work.

Costs related to Specialty Work shall not be included in Hard Construction Costs unless assessment shows that there is availability and capacity of D/M/W/ESB firms to perform such work. If Specialty Work is to be self-performed by the Contractor, no assessment is required.

Supplier means the entity who owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business as a regular dealer.

Subcontractor means an entity that the Contractor or other Subcontractor enters into a subcontract with, at any tier, to perform a portion of the Work.

Women Owned Business Enterprise (“WBE”) means only those firms certified as women-owned businesses by Oregon State Certification Office of Business Inclusion and Diversity (“COBID”).

Work means all design, services, material, labor, tools, equipment, and all appliances, machinery, systems, transportation, and appurtenances necessary to properly perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete, functioning, and satisfactory Project.

Work Product includes, but is not limited to, research, reports, computer programs, manuals, specifications, drawings, recordings, photographs, artwork and any data or information in any form.

ARTICLE 1 - PURPOSE

1.1 The purpose of this Plan is to ensure that the public served by the Owner receives the fullest benefit of the Project undertaken by the Owner, to improve and increase construction contracting and employment opportunities for racial and ethnic minorities, women, and economically disadvantaged individuals on City projects, to ensure that the Owner is making conscious and specific efforts through its contracting processes to not discriminate or indirectly perpetuate the historic under-inclusion of racial and ethnic minorities, women, and economically disadvantaged individuals in the construction industry and trades, and to ensure that the Owner receives the benefit of a highly skilled and well-trained workforce, and provides opportunities for firms that reflect the diversity of Portland in the Contractor and Subcontractor pools.

1.2 The timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. The Owner will assist the Contractor in securing skilled, efficient craft workers for the construction of the Project.

1.3 There is a desire to mutually establish and stabilize wages, hours and working conditions for the trade workers on the Project

1.4 Therefore, in recognition of the needs of this Project and to maintain a spirit of harmony and stability during the term of this Plan, the Owner will require the Contractor and Subcontractors to abide by the terms and conditions in this Plan.

1.5 Any unique and special needs of this Project are outlined in Exhibit # (insert Exhibit number if applicable).

ARTICLE 2 - SCOPE OF PLAN

2.1 This Plan applies to all new construction, rehabilitation, alteration, conversion, extension, painting, repair, improvement or other construction work performed at the Project site per the terms of the Contract between the Owner or the Contractor.

2.2 The provisions of this Plan apply to all persons or entities, who under written agreement are performing Work or providing construction services or materials covered by the provisions of this Plan and notice will be included in all contracts and/or subcontracts at every tier level pertaining to the Project, under the Contract.

2.3 This Plan is subordinate to all applicable laws, rules, regulations, ordinances or other governmental requirements pertaining to the Project and the Contract itself.

2.4 Nothing contained herein shall be construed to prohibit or restrict the Owner's right to exercise full and exclusive authority for the management of its own operations and the Owner's right of rejection.

2.5 Nothing contained herein shall be construed to prohibit or restrict the Owner, or its employees from performing work not covered by this Plan on the Project site.

2.6 The provisions of this Plan apply to the construction of the named Project. In recognition of the cooperative effort needed to accomplish the goals contained in this Plan and in order to ensure that those goals are met, the Owner, Contractor, and Subcontractors on the Project will make all necessary Equity Efforts as defined by this Plan.

2.7 Where a subject covered by the provisions of this Plan is also covered by a conflicting provision of the Contract Documents between the Owner and Contractor, the provisions of the Contract Documents for the Project shall prevail.

ARTICLE 3 –EQUITY ASSISTANCE BY THE CEIC

3.1 Purpose:

A. Recognition of the necessity for cooperation and communication with community organizations in achieving the diversity goals of this Plan.

- B. Recognition that the Owner has established an independent body, the Community Equity and Inclusion Committee (“CEIC”), to review the performance of City construction contracts subject to the Plan, provide guidance and advice to Contractors to increase utilization, and advise the City on the Contractor’s and Subcontractors’ Equity Efforts to achieve Plan goals.
- C. Agreement that the CEIC, as further described in Exhibit A: Community Equity and Inclusion Partnership Agreement Partnership Agreement), is qualified to provide insight and recommendations on efforts that will support achieving the diversity goals of this Plan.

3.2 Goal: The Contractor and Subcontractors are responsible for working to achieve the diversity goals of this Plan and ensure compliance with the requirements of this Plan. Advice and guidance from the CEIC can assist the Contractor and Subcontractor in meeting these goals. The CEIC’s review of the Contractor’s and Subcontractors’ Equity Efforts can assist in the Owner’s enforcement of the terms of the Plan.

3.3 Requirements for Contractor and Owner:

- A. The following roles, responsibilities, and expected commitment shall set forth the guidelines for the work performed by the Owner and the Contractor with respect to the CEIC’s assistance in helping the Contractor and Subcontractors achieve the goals and requirements of this Plan and review of Equity Efforts:
 - 1. Within sixty (60) days after council’s vote to authorize the alternative contracting method for the Project, the Owner will present an overview of the Project to the CEIC.
 - 2. During the preconstruction services phase of the Project (as set forth in the Contract between the Owner and the Contractor) and no later than thirty (30) days prior to the submission of the Guaranteed Maximum Price (“GMP”) or lump sum to council, the Owner and Contractor will present to the CEIC the following information:
 - i. Contractor’s and Subcontractor’s outreach for D/M/W/ESB contracting opportunities and Harassment Free Workplace Policy. e;
 - ii. Proposed list of Subcontractors, their anticipated scopes of Work, and the estimated subcontract amounts for subcontracts identified at that time; and
 - iii. Identify scopes of Work and subcontracts, if known, that resulted from the breakdown of subcontracts in excess of \$150,000 into targeted Work scopes.
 - 3. During the course of construction and at least one time every three months, the Owner and Contractor will present the prior three (3) month’s data on the current utilization of women and minorities in apprenticeships, workforce, and subcontracting and will also present a three (3) month forecast for the Project.

This information shall be given to the CEIC within one (1) month of the anticipated presentation.

4. The CEIC, the Owner and/or the Contractor may request to meet more frequently, up to one time per month, as needed to facilitate further information sharing and discussion on the achievement of this Plan's goals. Upon such request, the Owner and Contractor will arrange to attend the next CEIC meeting or work with the CEIC to arrange a special meeting within two (2) weeks or such alternative later time frame as mutually agreed to by the CEIC and the Owner.
5. The CEIC, Owner and/or Contractor may request to meet less frequently as appropriate. The CEIC and Owner must mutually agree to any revised schedule as a result of such request.

B. Review by the CEIC will include the following:

1. Contractor's and Subcontractors' Equity Efforts as set forth in this Plan.
2. Contractor's and Subcontractors' compliance with recruitment and retention efforts set forth in this Plan, including outreach, training, anti-harassment, and Equal Employment Opportunity initiatives.
3. Contractor's and Subcontractors' compliance with apprenticeship, workforce, and contracting goals and other goals and programs specific to the Project as set forth in this Plan.
4. Any applicable audit performed, related to the provisions of this Plan, by the Owner or on the Owner's behalf.

C. On a quarterly basis and as needed per the Owner's request, the CEIC will provide recommendations and information to the Owner and Contractor, including the following:

1. Provide suggestions and recommendations for reaching the Plan's goals, including but not limited to providing guidance on outreach and engagement of Subcontractors; and
2. Facilitate connections to unions, non-union organizations, CBOs, and workers and serve as a liaison, when appropriate, between Contractor, Subcontractors, unions, non-union organizations, community organizations, and workers.

D. On a quarterly basis and as needed per the Owner's request, the CEIC will report its findings to the Owner.

E. All Work Product provided, used or produced for CEIC review of the Plan or for the Project are the exclusive property of the City of Portland.

ARTICLE 4 – HIRING PROCEDURES

4.1 Purpose:

- A. Recognition that unions, non-union construction and trade organizations, and CBOs all have a role in recruiting, retaining and increasing the number of women and minority workers in the construction industry, and.
- B. Agreement that both union and non-union organizations can be resources for the Contractor and Subcontractors to achieve compliance with the diversity goals of this Plan and should be utilized in order to encourage inclusionary practices and to access as many women and minority workers as possible.

4.2 Goals: To establish hiring practices and opportunities that support the achievement of the diversity goals of this Plan.

4.3 Requirements for Contractor and Subcontractors:

- A. All apprentices on the Project shall be enrolled in either a state or a federally registered apprenticeship program.
- B. All other workers, shall be licensed, qualified, or appropriately trained for the person's particular scope of work.
- C. Where applicable, Contractor and Subcontractors shall work with union and non-union hiring resources and CBOs for employment opportunities.
- D. Within 30 days of being awarded the Contract or acceptance of the bid, the Contractor and Subcontractors shall notify the unions and non-union organizations of all opportunities for employment on the Project. The Contractors and Subcontractors have a continuing obligation to provide to the union and non-union organizations updated information on the Project as scopes of work and bid packages are delineated.
- E. Prior to beginning work on the Project and throughout the Project as appropriate and necessary, the Contractor shall set up or participate in job fairs or other services to attract minority and women workforce candidates.
- F. Contractor and Subcontractors shall inform the unions, non-union organizations, apprenticeship programs, and CBOs of the goals in this Plan and shall request that the unions, non-union organizations, apprenticeship programs, and CBOs refer diverse journey level workers and apprentices.
- G. Contractor shall designate an employee to be the point person for participation and fulfillment of the requirements of this Plan. This employee should have experience in diversification of the workforce and with D/M/W/ESB recruitment, retention, and subcontracting. To the

extent Contractor does not have such a person on staff, Contractor shall retain a sub-consultant to provide such services.

- H. Contractor and Subcontractors shall comply with Portland City Code Chapter 23.10 which requires that an applicant's criminal background history may not be considered prior to the conditional offer of employment, except to the extent an exemption applies.
- I. Nothing in this Plan limits the Contractor's or Subcontractors' rights to reject proposed employees. The Contractor or Subcontractor also have the right to reject any applicant for any reason provided that such right is exercised in good faith, and in a nondiscriminatory manner.
- J. The Contractor or Subcontractor retains the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdictions, and select employees to be laid off.

ARTICLE 5 – COMMUNITY APPRENTICESHIP

5.1 Purpose:

- A. Recognition of the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, including the building of capacity among minority and women workers.
- B. Agreement that Equity Efforts are required to facilitate the entry of historically disadvantaged or underrepresented people, including racial and ethnic minorities, women, and low-income people, who are interested in careers in the construction industry.

5.2 Goals: To increase apprenticeship opportunities on public projects and to ensure successful completion and retention of workers in the trades.

5.3 Requirements for Contractor and Subcontractors:

- A. For contracts at any tier of \$100,000 or more, the Community Apprenticeship requirements described in the Partnership Agreement and as set forth below shall apply
- B. Provide all apprentices a fair chance to perform successfully by providing the following:
 - 1. On-the-job training, including:
 - i. State approved or federally approved training programs;
 - ii. Hands-on training; and
 - iii. Training in all work processes described in the apprenticeship standards.

2. No requirement or expectation that apprentices and pre-apprentices have previous experience.
- C. When possible, provide a list of late-term apprentices or journey level workers who are working at the Project site and who are willing to serve as mentors for apprentices and pre-apprentices.
 - D. Pay apprentices in accordance with state or federal prevailing wage rates applicable to the Project, including health insurance and retirement benefits as a fringe benefit consistent with the state or federal prevailing wage fringe rate applicable to the Project. Subcontracts in an amount of \$500,000 or less related to work on this Project will be exempt from the retirement benefits requirement and, in lieu of providing retirement benefits, will instead be allowed to pay the equivalent dollar amount for such retirement benefits to achieve the prevailing wage rate of pay for its employees, as allowed under the Prevailing Wage statute (ORS 279C.800-870).
 - E. Contractors and subject Subcontractors shall register with the Bureau of Labor and Industries (“BOLI”) as a Training Agent. Registration as a Training Agent in a specific trade is not required where there are no training opportunities in that trade on the Project. Such exemption will be determined based on the maximum ratio allowed by BOLI.
 - F. Apprenticeable trades shall include only those that are state or federally-certified. It shall not include the following trades or classifications: flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, or secretary. Such trades are exempt from this Article 5.
 - G. Apprentice referrals:
 1. Using the Worker Request Form, request female or minority apprentices from the union or open shop apprenticeship program if such an action will help remedy historical underutilization in the Contractor’s or Subcontractor’s workforce.
 2. If the apprenticeship program is unable to satisfy the Contractor’s or Subcontractor’s request, Contractor shall contact recognized pre-apprenticeship programs, and/or CBOs which have been approved by BOLI, as a “first source” for referrals and seek to enroll interested individuals into the apprenticeship programs.
 3. After the “first source” outreach is exhausted, contact other CBOs, which may not be BOLI-approved, to request information on individuals that are or may be interested in enrolling in the apprenticeship program.
 - H. Documentation of Equity Efforts to be maintained and submitted as set forth below:
 1. Maintain a written record of the requests for apprentices, including the name of the apprenticeship program, pre-apprenticeship program, community-based

organization, union or open shop, the name of contact person, phone, fax, date, time, job location, start date;

2. Submit proof of Contractor's and subject Subcontractor's registration as Training Agents with BOLI prior to beginning any Work on the Project.
 3. Maintain records of the on-site workforce to sufficiently allow the Owner to determine whether the Project is meeting the goals and to assess the rates of apprenticeship hiring of racial and ethnic minorities and women. These records shall include disaggregated racial, ethnic, and gender data. Such documentation shall be submitted to Owner on a monthly basis.
 4. Maintain documentation of good faith efforts made to meet the apprenticeship goals set forth above for the duration of the Project. Such documentation shall be submitted to the Owner on a monthly basis.
 5. Submit a Monthly Employment Report including all hours subject to prevailing wage rates, in addition to supervisors, foremen, and superintendents, which shall be submitted in accordance with submittal instructions on the report form to the Owner by the 5th day of each month.
 6. Maintain documentation of health insurance coverage and retirement benefits for workers employed on the Project or contributions at a comparable level that are provided to the worker.
- I. Contractors and Subcontractors shall exercise best efforts and work in good faith to achieve the workforce goals and to fulfill the requirements as set forth above for the life of the Project, with particular emphasis on the recruitment and retention of apprentices from historically disadvantaged or underrepresented communities, including racial and ethnic minorities, and women.

5.4 Exemptions:

A. Requests for Exemption:

1. Exemptions to the percentage goals set forth in the Partnership Agreement shall be subject to and follow the procedure set forth in City Administrative Rule 1.20 Section 5 – EXEMPTIONS.
2. Except where otherwise exempted above, exemptions to outreach, training, or mentorship requirements must be approved by the Owner in writing prior to starting Work on the Project and shall comply with the following:
 - i. All requests to exempt all or any portion of the Work on the Project shall be submitted to the Owner fourteen (14) days before any construction work on the Project begins;

- ii. All requests must include back up documentation supporting the validity of an exemption and good faith efforts taken to comply with the original terms of the Plan; and
 - iii. Requests for exemptions shall be directed to the Owner.
 - 3. Written requests for exemptions during the course of the Project will be considered by the Owner only for extreme circumstances.
 - 4. Any exemptions granted will be reported by the Owner to the CEIC.
- B. Should the Contractor and Subcontractors subject to Article 5 be unable to fulfill the requirement for apprentice hours, then the Contractors or Subcontract may use the following methods, subject to written approval by the Owner:
- 1. Include hours worked on the Project by apprentices who are required to be away from the job site for related training during the course of the Project, but only if the apprentice is rehired by the same Contractor or Subcontractor after completion of related training; or
 - 2. Include hours worked on the Project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the twelve (12) month period following the apprentice's completion date.

ARTICLE 6 – COMMUNITY WORKFORCE RECRUITMENT AND RETENTION

6.1 Purpose:

- A. Recognition of the need to facilitate the recruitment, retention, and promotion of historically disadvantaged or underrepresented people, including racial and ethnic minorities, and women who are interested in careers in the construction industry.
- B. Agreement that a more robust equity approach is required for the Project pursuant to the City's goals on equity and inclusion.

6.2 Goals: For contracts at any tier of \$100,000 or more, the Community Workforce Recruitment and Retention workforce diversity goals described in the Partnership Agreement shall apply.

6.3 Requirements for Contractors and Subcontractors subject to the Goals set forth above:

- A. The Contractor and Subcontractors with subcontracts in excess of \$500,000 shall be required to gather and utilize information on recruitment, as set forth below:

1. Conduct workshops with or otherwise solicit input from employees to enlist suggestions and ideas on how to increase employment of underutilized groups.
2. Participate in or conduct job fairs to discuss the Project and to recruit minority and women employees and Subcontractors.
3. Allow scheduled job site visits, as safety allows, by participants in community programs to increase awareness of job and training opportunities in the construction trades.
4. Keep applications from qualified women and minorities for the duration of the Project, and notify them when an opening occurs.
5. Keep sign-in sheets from outreach efforts which identify attendees.

B. The Contractor and all Subcontractors shall comply with the following requirements:

1. Provide and maintain a harassment-free workplace:
 - i. Owner will discuss its Prohibition Against Workplace Harassment, Discrimination and Retaliation Policy during the Pre-Construction Meeting and Contractor shall disseminate the policy to its employees and Subcontractors.
 - ii. Provide a complete orientation to the job site to all workers, including procedures for reporting problems, and expected crew behaviors.
 - iii. Verify that employees have received a copy of the Contractor's or Subcontractor's policies regarding harassment, discrimination, and retaliation.
 - iv. Provide a list of resources to employees identifying support systems including, but not limited to, Equal Employment Opportunities, Employee Assistance Programs, community resources, and mentors.
 - v. Maintain a responsive grievance procedure that supports retention and anti-harassment efforts which will be prominently posted on the jobsite in a conspicuous and accessible location.
 - vi. Take steps to reduce feelings of isolation among racial and ethnic minorities and women by making every attempt to have several racial and ethnic minorities and women at the job site and by informing such workers about available support systems.

- vii. Provide information at the jobsite about grievance procedures and complaint processes available to workers via the City of Portland, Bureau of Labor and Industries, and other resources.
- 2. Support Equal Employment Opportunity initiatives:
 - i. Review and disseminate, at least annually, the Contractor's and Subcontractor's EEO policy and affirmative action obligations under this Plan with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.
 - ii. Provide cultural competency training, or provide access to such training, to all managers, supervisors, and owners, and conduct a review, at least annually, of all managers' and supervisors' adherence to and performance under the Contractor's and Subcontractor's EEO policies, affirmative action obligations, and cultural competencies.
 - iii. Provide the number of toilet facilities in an amount proportional to the ratio of women working on the Project (with a minimum of one (1)) for people who identify as women on the job site. Do so by maintaining a clean, accessible and locking toilet for crew members who identify as women, and by removing graffiti immediately to help create a respectful environment.
 - iv. Provide clean, accessible, private, and locking lactation facilities separate from toilet facilities, as needed.
 - 3. Maintain documentation of best efforts of compliance with the strategies as set forth above and submit such documentation to the Owner upon request.
 - 4. Contractors and Subcontractors shall exercise best efforts and work in good faith to achieve the workforce diversity goals and to fulfill the requirements as set forth above for the life of the Project, with particular emphasis on the recruitment and retention of apprentices from historically disadvantaged or underrepresented communities, including racial and ethnic minorities, women, and low-income people.

6.4 Exemptions:

A. Requests for Exemption:

- 1. Exemptions to the percentage goals set forth in the Partnership Agreement shall be assessed on a project-by-project basis through the Contractor's and Owner's assessments of the scopes of work for each trade implicated in the Project, current marketplace availability for such trades, and historical disparity data and other assessment as reviewed by the CEIC. Modification of specific goals shall be

negotiated between the Owner's Project Manager, the Chief Procurement Officer and the Contractor, with review and advice of the CEIC, and any increased or reduced percentage goals shall be documented for each affected trade.

2. Except where otherwise exempted above, exemptions to goals, training or mentorship requirements must be approved by the Owner in writing prior to starting Work on the Project and shall comply with the following:
 - i. All requests to exempt all or any portion of the Work on the Project shall be submitted to the Owner fourteen (14) days before any Work on the Project begins;
 - ii. All requests must include back up documentation supporting the validity of an exemption and good faith efforts taken to comply with the original terms of the Plan; and
 - iii. Requests for exemptions shall be directed to the Owner's Contract Compliance Specialist.
3. Written requests for exemptions during the course of the Project will be considered by the Owner only for extreme circumstances.

ARTICLE 7 – SUBCONTRACTING

7.1 Purpose:

- A. Recognition that one of the barriers to entry for many D/M/W/ESBs is a lack of proven success of qualified D/M/W/ESB firms in getting contracts on commercial construction projects of the type generally contracted for by the Owner.
- B. Recognition that D/M/W/ESB firms are afforded fewer opportunities to contract with non-D/M/W/ESB prime contracting firms.
- C. Agreement that historical disparity has adversely impacted opportunities for women-owned and minority-owned firms in the construction industry.

7.2 Goals: For all work performed on the Project, the base-line utilization goal for firms that have been certified by the State of Oregon as a Disadvantaged Business Enterprise, Minority-Owned Business, a Women-Owned Business, or an Emerging Small Business (“D/M/W/ESB”) is as described in the Subcontracting Goals section of the Partnership Agreement .

7.3 Requirements for Contractor and Subcontractors:

- A. Provide subcontracting opportunities, including and subject to the following:

1. Identify subcontracting opportunities that will provide opportunities for D/M/W/ESBs to successfully bid, and which could lead to building the capacity of these firms to bid for larger contracts on future Owner projects.
 2. In order to allow smaller qualified contractors to successfully bid on subcontracts, the Owner shall require Contractor and Subcontractors with subcontracts in excess of \$150,000 to provide targeted Work scopes where feasible as determined by the Owner.
 3. Utilize the Owner's Prime Contractor Development Program ("PCDP") participants as a first source, where possible, in either direct contracting or soliciting for scopes of Work for the Project.
 4. Any D/M/W/ESB on the Project deemed to warrant replacement must be terminated in accordance with the provisions set forth in the Contract. The basis for termination must be communicated to the Owner prior to termination, along with any supporting documentation requested by the Owner.
 5. The Contractor shall not add, delete, or replace any Subcontractor after the bid is submitted or the Contract is awarded without the consent of the Owner's Chief Procurement Officer. The Contractor shall make good faith efforts to contract with a D/M/W/ESB for the Work to be performed and submit along with documentation of their efforts, a Subcontractor Change/Request Form to the Owner's Contract Compliance Specialist for approval prior to making any changes.
- B. Utilize equitable procurement procedures which shall consist of an open, fair, and competitive solicitation process, including the following:
1. Early identification of bidding opportunities, including:
 - i. Contractor shall identify all divisions of Work that will be subcontracted.
 - ii. Outreach shall start during the pre-construction services phases to provide advance notice to D/M/W/ESBs, including:
 - a. Advance notice will also be sent to key trade and business organizations that promote utilization of minorities and women in public works projects.
 - b. Contractor shall contact firms by email and/or fax notifying them of the anticipated Work available on the Project.
 - c. Information shall be posted on the Contractor's website, or to a shared website approved by Owner, to facilitate assessment of the interest of D/M/W/ESBs for the Work on the Project.

- d. If deemed necessary by the Owner, the Contractor's outreach shall continue during the life of the Project and will be tailored to specific opportunities made available in solicitation packages.
 - iii. Contractor shall conduct pre-bid/pre-proposal meetings for all solicitation packages, including:
 - a. Fulfilling the purpose of the meeting which is to provide clarity and understanding of the Project and solicitation requirements, view the jobsite, and to advise bidders of the importance of the commitment to and expectations for D/M/W/ESB utilization.
 - b. Bidders/Proposers will be offered assistance in conducting effective solicitation steps to obtain D/M/W/ESB participation.
 - c. Contractor is required to notify the Owner's Contract Compliance Specialist and Owner of all pre-bid/pre-proposal meetings.
 - d. For solicitation packages with an estimated value greater than \$150,000, Contractor shall coordinate meetings with the Owner's Contract Compliance Specialist who must attend all pre-bid/pre-proposal meetings.
 - iv. During the construction services phase, the Contractor and Subcontractors with subcontracts in excess of \$150,000 shall conduct outreach apprising the construction industry and D/M/W/ESBs of the subcontracting procurement process and approach to D/M/W/ESB utilization, including:
 - a. Information on anticipated solicitation dates and divisions of Work identified for D/M/W/ESB participation.
 - b. Information on the resources that will be available to them during the bidding and construction phases.
- 2. Targeted solicitation methods and conditions, including:
 - i. Contractor shall provide a solicitation package to interested D/M/W/ESBs and/or make it available for pick-up including all of Owner's contracting requirements as referenced in the Project's Contract Documents, including:
 - a. Before a solicitation is released, the Owner's Contract Compliance Specialist and the Owner's Representative will be provided with a copy of the solicitation package for review and comment.

- b. Contractor will make themselves available to assist prospective D/M/W/ESB bidders in understanding solicitation requirements.
- ii. Contractor shall procure all Subcontractors and Suppliers for all divisions of Work in the completion of the Project by selecting the bidder using one or more of the following methods:
- a. Informal Solicitations - Work packages estimated up to \$150,000
 1. Project solicitation packages shall be advertised in the *Daily Journal of Commerce* and a minimum of two minority publications (e.g., *El Hispanic News*, *The Skanner*, *The Portland Observer*, *The Asian Reporter*).
 2. Solicit bids utilizing the City's PCDP where possible. If less than two responsive bids are received, proceed to the following steps.
 3. Target a minimum of three D/M/W/ESBs in each division of Work.
 4. Contractor or Subcontractor shall notify D/M/W/ESBs in writing who specialize in the type of work that will be subcontracted and shall provide adequate information for submission of a bid, along with the date and time that sub-bids are due. Contractor shall obtain a total of three (3) bids from D/M/W/ESBs who specialize in the type of work that will be subcontracted.
 5. Solicit to open market if 1 through 4 above are not available.
 - b. Formal Price-Based Solicitations - Work packages estimated at greater than \$150,000
 1. Project solicitation packages shall be advertised in the *Daily Journal of Commerce* and a minimum of two minority publications (e.g., *El Hispanic News*, *The Skanner*, *The Portland Observer*, *The Asian Reporter*).
 2. Contractor or Subcontractor shall notify D/M/W/ESBs in writing who specialize in the type of work that will be subcontracted and shall provide adequate information for submission of a bid, along with the date and time that sub-bids are due. Contractor shall obtain a total of three (3) bids from D/M/W/ESBs who specialize in the type of work that will be subcontracted, where possible.

3. Contractor may maintain three (3) full sets of plans and specifications for solicitation packages where possible for review at local plan centers, such as (but not limited to), Daily Journal of Commerce, Oregon Association of Minority Entrepreneurs (“OAME”) Plan Center, Metropolitan Contractors Improvement Partnership (“MCIP”), and Ford Graphics. Confidential drawings must be handled separately and will only be distributed following the Owner’s Confidentiality Policy.
- c. Formal Best-Value Solicitations - Work packages estimated at greater than \$150,000
1. Where the Work package involved requires specialized knowledge, skill, experience and expertise a Request for Proposal (“RFP”) may be used. RFPs must include the following criteria for diversity in contracting:
 - i. Describe your company’s policy and practice of contracting with D/M/W/ESBs including the number of individual D/M/W/ESBs contracted, the dollar amount contracted and amount paid to D/M/W/ESBs over the past three years. List the name, nature of work, and dollar amount of each D/M/W/ESB for the cited projects.
 - ii. Describe objectives for increasing D/M/W/ESB subcontracting capacity in the Work of the Project, including an estimate of the dollar volume of D/M/W/ESB utilization you will aspire to achieve.
 - iii. Describe your company’s hiring policy and practice for hiring, retaining and advancing minorities and women in your workforce.
 2. RFPs shall be publicly-advertised in the *Daily Journal of Commerce*, and a minimum of two minority publications (*e.g., El Hispanic News, The Skanner, The Portland Observer, The Asian Reporter*).
 3. Contractor or Subcontractor notify D/M/W/ESBs in writing who specialize in the type of work that will be subcontracted and shall provide adequate information for submission of a bid, along with the date and time that sub-bids are due. Contractor shall obtain a total of three (3) bids from D/M/W/ESBs who

specialize in the type of work that will be subcontracted where possible.

4. Contractor shall maintain three (3) full sets of plans and specifications for solicitation packages for review at local plan centers, such as (but not limited to), Daily Journal of Commerce, OAME Plan Center, MCIP, and Ford Graphics. Confidential drawings must be handled separately and will only be distributed following the Owner's Confidentiality Policy.
- iii. Subcontractors of any tier bidding or providing quotes on any package, division of Work and/or Work element having an estimated value greater than \$150,000 shall be required to meet the requirements of the Plan. Contractor shall deem bid proposals not meeting this requirement to be non-responsive
- iv. If the Contractor or an affiliate or subsidiary of the Contractor will be participating in the solicitations as a bidder for a subcontracted scope of the Work, the Contractor shall disclose that fact in the selection process and announcements. When an affiliate or subsidiary will be bidding, the Contractor shall identify the procedures the Contractor will utilize in order to make the process impartial, competitive and fair. This shall include, but is not limited to, opening of bids by a representative of the City and objective review of bids by an independent third party. The Contractor's participation in solicitations as a bidder is subject to the Owner's approval.

C. Provide equitable assistance, including the following:

1. Once subcontracts are awarded and secured, Contractor shall offer all successful D/M/W/ESB Subcontractors, regardless of tier, technical assistance as necessary to ensure the successful completion of the subcontract. Such technical assistance shall be provided as requested by the Owner, may be supported by the City's COEF program, and may include, but is not limited to, the following:
 - i. Establishing a schedule of values for the Work to be performed.
 - ii. Preparation of cash flow projections required for successful performance of the Work.
 - iii. Correctly calculate and submit pay requests, invoices, and required documentation to obtain progress payments consistent with the Owner's twice-monthly payment provisions.
 - iv. Advance payment for materials on hand where appropriate to facilitate successful participation of all tier D/M/W/ESBs.

- v. Establishing projected measurable capacity building elements (e.g. additional equipment, expanded expertise, improved production efficiency, etc.) anticipated as a result of participating in the capacity building component of this Plan.
 - vi. Provide technical assistance and training in the use of Building Information Management (“BIM”) as needed and as it relates to specific scopes of Work for Subcontractors for the Project.
 - vii. Look for opportunities to increase the utilization of small D/M/W/ESB firms on incidental Project Work such as flagging, trucking/hauling, landscaping, or cleanup. Contractor may establish unit price Project packaging for Work such as trucking, erosion control, and flagging through which a pool of D/M/W/ESB firms can profitably perform.
 - viii. Provide mentoring opportunities, which could include sharing with D/M/W/ESB firms some general contractor duties, contract administration tasks, scheduling, Subcontractor coordination, or permitting activities in order for the D/M/W/ESB to gain knowledge and experience not commonly passed on through the General Contractor/Subcontractor relationship.
2. All subcontracts are subject to the Owner’s accelerated payment requirements specified in the General Conditions within the Contract Documents. In addition, Contractor shall release a Subcontractor’s retainage upon completion and acceptance of the Subcontractor’s Work, irrespective of whether the Owner has released any of the Contractor’s retainage, except to the extent a claim or dispute exists as to that Subcontractor’s Work. These provisions are mandatory on all Project subcontracts at any tier.
3. May negotiate pricing and secure a material Supplier or group of Suppliers for eligible participants on particular aspects of the Project to purchase supplies and materials at the same cost in order to decrease or eliminate material pricing as a factor in the award of contracts to D/M/W/ESB firms.
4. May purchase Subcontractor Default Insurance meeting the requirements of payment and performance bonds as set forth in the statute, instead of requiring surety bonds from D/M/W/ESB Subcontractors. If an OCIP/CCIP is executed on this Project, this condition may become a part of that policy.
5. The individual identified by the Contractor in Section 4.3 F, shall participate during the life of the Project and provide assistance to the Contractor and Subcontractors in the utilization of equitable procurement procedures and compliance with the Plan requirements.

6. Upon the request of an unsuccessful D/M/W/ESB bidder, Contractor shall provide unsuccessful D/M/W/ESB bidders with information on the qualification and selection process and on the Contractor's selection decisions to enable the unsuccessful D/M/W/ESB bidders to understand the reasons why they were not selected and to improve their substantive qualifications or methods of competing. This includes, but is not limited to, briefing meetings held with individual bidders or, if agreed upon by the D/M/W/ESB bidder, in groups of bidders who all bid on the same bid package.

D. Documentation of Equity Efforts to be maintained and submitted, as set forth below:

1. Contractors and Subcontractors will exercise best efforts and work in good faith to achieve the D/M/W/ESB goals and to fulfill the requirements as set forth above for the life of the Project, with particular emphasis on subcontracting opportunities for historically disadvantaged or underrepresented communities, including racial and ethnic minorities, women, and low-income people.
2. Contractor and Subcontractors shall comply fully with the provisions of this Plan in the solicitation and award of subcontracts during the life of the Project. Contractor will submit all bid results, responses to RFP's, and other supporting documentation to the Owner after each solicitation, but prior to subcontract award to review and verify compliance with established procurement procedures.
3. Contractor shall establish and maintain contact with all participating D/M/W/ESBs, regardless of tier, to monitor and coordinate efforts to prevent problems from arising and/or solve those that have arisen, which are or may contribute toward unsuccessful performance by the affected D/M/W/ESB(s).
4. Submit a Monthly Subcontractor Payment and Utilization Reports to the Owner's Representative and Owner's Contract Compliance Specialist by the 15th of each month.
5. On a quarterly basis, Contractor shall compile disaggregated racial, ethnic, and gender data of Subcontractors and provide such data to the Owner for verification.
6. All required documentation of Equity Efforts to fulfill the requirements set forth in section 7.3 (including Forms 1 & 2 attached hereto) will be provided to the Owner's Representative and Owner's Contract Compliance Specialist and are subject to review by the CEIC.

7.4 Exemptions:

- A. If the Contractor or Subcontractors are unable to meet the goals set forth in Section 7.2, good faith efforts shall be submitted in Form 2 and reviewed by the Owner for compliance with the Equity Efforts.

- B. If the Contractor or Subcontractors are unable to obtain three (3) responsive bids as set forth in Section 7.3 (B)(2), good faith efforts shall be submitted in Form 2 and reviewed by the Owner for compliance with the Equity Efforts.
- C. Exemptions to the percentage goals set forth in the Partnership Agreement shall be assessed on a project-by-project basis through the Contractor's and Owner's assessments of the scopes of work, current marketplace availability of D/M/W/ESB firms to perform such work, and historical disparity data and other assessment as reviewed by the CEIC. Modification of specific goals shall be negotiated between the Owner's Project Manager, the Chief Procurement Officer and the Contractor, with review and advice of the CEIC, and any increased or reduced percentage goals shall be documented.

ARTICLE 8 – REPORTING REQUIREMENTS AND ADMINISTRATION

8.1 Purpose: Recognition that documentation provides a useful resource for compliance review of Equity Efforts and as a historical reference tool.

8.2 Goals: Obtain and assess objective evidence of Equity Efforts for evaluation by the Owner and the CEIC to verify Equity Efforts and compliance with the Plan.

8.3 Requirements for Contractors and Subcontractors:

- A. Contractor and Subcontractors shall maintain documentation of compliance throughout the terms of Contract.
- B. Firms who are certified as both MBE and WBE shall be tracked as both but shall be counted only once towards the Subcontracting goals.
- C. Workers who identify as both minority and female shall be tracked as both but shall be counted only once towards the Community Workforce goals.
- D. Contractor and Subcontractors shall submit their completed documentation and provide reports to the Owner within the timeframe set forth below. Such documentation includes the following:
 - 1. All solicitation packages within thirty (30) days after sending out such solicitation;
 - 2. All solicitation results, including disaggregated racial, ethnic, and gender data, within sixty (60) days following award of the Subcontract;
 - 3. Inquiries of D/M/W/ESB interests in bidding, bid amounts, and contract awards, as requested by the Owner;
 - 4. Subcontractor replacement requests/decisions, as applicable;

5. Information about technical assistance requested/provided and/or referred shall be provided quarterly;
 6. Apprenticeship results, including disaggregated racial, ethnic, and gender data by the 5th of each month;
 7. Workforce diversity results, including disaggregated racial, ethnic, and gender data by the 5th of each month;
 8. Problems and successes experienced in outreach and utilization of D/M/W/ESBs shall be provided quarterly;
 9. Electronic spreadsheet of all awards, material expenditures and supplier purchases, including disaggregated racial, ethnic, and gender data shall be provided when appropriate;
 10. Form 1 and 2, as applicable; and
 11. Other reports as requested by Owner.
- E. All parties that participate in the Project and perform work on the Contract will be expected to comply with the rules governing the Owner's access to records, including the following:
1. Copies of applicable records shall be submitted as required or made available upon request, as indicated in this Plan.
 2. The Owner, either directly or through a designated representative, may conduct performance audits of the services specified in this Plan at any time in the course of the Project and during the three (3) year retention period, following Final Payment. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

ARTICLE 9 – COMPLIANCE

9.1 Purpose: Failure to meet the requirements of this Plan impairs the Owner's efforts to promote workforce and contracting diversity and to provide fair and equal opportunities to the public as a whole as a result of the expenditure of public funds. Therefore, failure to meet the requirements set forth in this Plan will constitute a material breach of the Contract.

9.2 Remedies for Breach: In the event of a breach of this Plan, the Owner may take any or all of the following actions:

A. Withholding Progress Payments. The Owner may withhold all or part of any progress payment or payments until the Contractor has remedied the breach of Contract. In the event that progress payments or partial payments are withheld, the Contractor and Subcontractors shall not be entitled to interest on said payments.

B. Liquidated Damages:

1. The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for Contractor's or Subcontractors' failure to comply with the requirements of this Plan. The parties further agree that it is difficult, if not impossible, to determine the cost to the Owner when, due to a lack of Equity Efforts, workforce diversity or D/M/W/ESB subcontracting opportunities are not provided in accordance with the Plan.
2. If Contractor or a Subcontractor fails to fulfill the requirements set forth in Section 4 "Hiring Procedures" or Section 5 "Community Apprenticeship" of this Plan, the Owner may assess and the Contractor agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours until the breach is remedied or, if the breach cannot be remedied, \$2,000 for each violation.
3. If Contractor or a Subcontractor fails to fulfill the requirements set forth in Section 6 "Community Workforce Recruitment and Retention" of this Plan, the Owner may assess and the Contractor agrees to pay damages of \$250 per day for each violation of noncompliance or until the breach is remedied or, if the breach cannot be remedied, \$2,000 for each violation.
4. If Contractor or a Subcontractor fails to fulfill the requirements set forth in Section 7 "Subcontracting" of this Plan, the Owner may assess and the Contractor agrees to pay damages of \$250 per day for each violation of noncompliance until the Project is complete or until the breach is remedied or, if the breach cannot be remedied, \$2,000 for each violation.
5. These damages are independent of any other damages that may be assessed under other provisions of the Contract.

C. Non-Responsible Designation. If the Contractor or Subcontractor(s) fail to fulfill the required Equity Efforts or otherwise fail to comply with the spirit or intention of this Plan, the Contractor or Subcontractor(s) may be found to not meet the standards of responsibility for subsequent City projects and may be deemed unqualified to work on at City project, resulting in rejection of their offers or disqualification from consideration of award of other City contracts for a period of up to two years.

D. Termination. If the Contractor or Subcontractor(s) fail to fulfill the required Equity Efforts, or otherwise fail to comply with the spirit or intention of this Plan, the Contractor may be removed from the Project pursuant to the General Conditions of the Contract.

- E. Other Remedies. The Owner's foregoing rights and remedies shall not be deemed exclusive and shall be in addition to any and all rights otherwise available at law or in equity. The exercise by the Owner of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the Contractor, including, without limitation, the right to compel specific performance.

ARTICLE 10 - SEVERABILITY

10.1 If any clause, sentence or any other portion of the terms and conditions of this Plan becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.