

**INTERGOVERNMENTAL AGREEMENT****Between****Portland Development Commission****And****Portland Bureau of Transportation****For the****SW Montgomery & 4<sup>th</sup> Avenue Streetcar Relocation Project:  
Design through Construction**

This Intergovernmental Agreement (this "Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, 2013, ("Effective Date") is made and entered into by and between the **City of Portland, Bureau of Transportation** (the "Bureau") and the **Portland Development Commission** ("PDC").

**RECITALS**

1. PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
2. The Bureau is responsible for transportation operations and improvements within the City public rights of way.
3. A cooperative partnership between PDC and the Bureau will be beneficial to the implementation of urban renewal plans and the development of other public policies, plans and capital projects.
4. Both parties desire to enter into an agreement that will establish terms and conditions by which one party will engage and compensate the other party for performing specific services.

Now therefore, the parties agree as follows:

## AGREEMENT

### I. The Project

#### A. Background

1. The reintroduction of modern streetcar service in Portland emerged as part of the 1988 Central City Plan. Among the key goals for streetcar service was “encouraging infill...and serving as a catalyst for housing development.”
2. The initial 2.4 mile streetcar alignment was selected to connect major ridership generators and employment centers: Legacy Good Samaritan Hospital and Portland State University. Service began in 2001.
3. In 2002, the City of Portland Transportation System Plan (“TSP”) was adopted. The TSP included the proposed extension of the Portland Streetcar from the terminus at SW 4<sup>th</sup> Avenue and SW Montgomery Street to a new terminus of SW River Parkway just west of SW Moody Avenue (“RiverPlace Extension”).
4. In 2003, PDC and the Bureau entered into an agreement for purposes of funding the engineering and construction of the RiverPlace Extension. The RiverPlace Extension was built to provide new service and access to the multi-family housing units close to SW Harrison and existing housing in RiverPlace, as well as to new development planned in the RiverPlace area.
5. At the time the RiverPlace Extension was being designed and constructed, approximately \$90,000 of funding from the South Park Blocks Urban Renewal Area was used to provide for the inclusion of a revised temporary alignment track, electrification and civil engineering work around Block 153. Construction of a permanent alignment diagonally through Block 153 was delayed so as to support future development of the block by PDC. Funding for the temporary and permanent alignments was determined to come from a partnership between PDC and the Bureau. Construction began on the RiverPlace Extension in 2004 and passenger service began in March 2005.
6. Over the next several years PDC and the Bureau reviewed multiple options for the permanent alignment in conjunction with the redevelopment of PDC’s Block 153 properties, including housing and in 2009 a commercial use project called the Oregon Sustainability Center (“OSC”).
7. On November 20, 2009, the Bureau applied to the Oregon Department of Transportation (“ODOT”) for a ConnectOregon III grant in the amount of \$1,958,651 for the OSC Streetcar Access Project to build a dual streetcar track and improve the substandard pedestrian and bicycle environment. The grant application was submitted in partnership with Portland State University, PDC, TriMet, Oregon University System, Portland+Oregon Sustainability Institute, Oregon BEST, Portland Business Alliance, Earth Advantage, and Oregon State University.

8. In 2010, the Bureau was awarded and Portland City Council accepted an ODOT ConnectOregon grant in the amount of \$1,958,641, including from PDC matching funding in the amount of \$1,500,000.
9. In 2011, PDC and the Bureau entered in to and Intergovernmental Agreement ("IGA") for the Oregon Sustainability Center Streetcar Relocation Project: Preliminary and Final Design. The Project entailed two phases of which only Phase I – Preliminary Design was completed. For that work PDC compensated the Bureau in the amount of \$70,461.
10. In 2012, with development of the PDC properties at Block 153 not moving forward with the Oregon Sustainability Center, PDC and the Bureau renewed discussion regarding the permanent alignment that could accommodate future new development for Block 153.
11. PDC and the Bureau are working to complete (the "Project") to rebuild the streetcar alignment from the temporary alignment to a permanent alignment that will run on SW Montgomery and SW 4<sup>th</sup> Avenue. The Project entails design and construction of the following improvements and benefits:
  - a) Eliminate the single track bottleneck in the streetcar system;
  - b) Provide a double-track on SW Montgomery and SW 4<sup>th</sup> Avenues;
  - c) Minimize streetcar queuing in the travel lane that results in motor vehicles entering the transit lane;
  - d) Minimize pedestrian conflicts with the streetcar at SW 4<sup>th</sup> Avenue and SW Montgomery Street;

A detailed description of the scope of work and the budget is set forth in Exhibit A (the "Scope of Work and Budget") to this Agreement. The tasks, activities, and deliverables described in this Section B and detailed in the Scope of Work and Budget shall be referred to in this Agreement as the "Work".

## **II. CONTRACT MANAGEMENT**

- A.** The party for whom the Work is being performed, and who will be compensating the other party for performing the Work, shall be referred to in this Agreement as the "Funding Agency". PDC shall be referred to herein as the Funding Agency.
- B.** The party performing the Work for the Funding Agency shall be referred to in this Agreement as the "Performing Agency". The Bureau shall be referred to herein as the Performing Agency.
- C. Funding Agency.**
  1. **Contract Signatory.** The Funding Agency Contract Signatory shall be Patrick Quinton, or such other person as designated in writing by the Funding Agency Director (the "Funding Agency Contract Signatory"). The Funding Agency Contract Signatory is authorized to give notices and to carry out other actions

referred to herein, including termination of this Agreement as provided in Section V.

2. Contract Manager. The Funding Agency Contract Manager shall be Dan Spero (the "Funding Agency Contract Manager"). The Funding Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

**D. Performing Agency.**

1. Contract Signatory. The Performing Agency Contract Signatory shall be Leah Treat, or such other person as designated in writing by the Director (the "Performing Agency Contract Signatory"). The Performing Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
2. Contract Manager. The Performing Agency Contract Manager shall be Kathryn Levine (the "Performing Agency Contract Manager"). The Performing Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

**E. Management Staffing.**

1. A project manager shall be designated by the Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by the Funding Agency (the "Funding Agency Project Manager") to carry out the responsibilities designated in this Agreement.
  - a) The Funding Agency Project Manager shall be Irene Bowers or such other person as designated in writing by the Funding Agency Contract Manager.
  - b) The Performing Agency Project Manager shall be Chris Armes or such other person as designated in writing by Performing Agency Contract Manager and approved by the Funding Agency Project Manager.
2. If either project manager is not performing or is not able to continue performing the responsibilities designated in this Agreement, then the respective contract manager shall designate a replacement project manager. If a replacement project manager is not available, then upon written agreement of the parties, the other party may take on all project management responsibilities designated in this Agreement.
3. The Funding Agency Contract Manager and the Performing Agency Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either PDC or the Bureau desires to replace a project manager, or other key staff identified in section II.F. or section II.G. of this Agreement, the party's contract manager shall notify the other contract manager in writing, and if required, they will

meet to discuss and agree on any necessary adjustments to provide adequate time to make such change.

**F. Project Staffing – Performing Agency:** The following Performing Agency personnel are being assigned to perform the Work. Only personnel listed below, or subsequently identified and authorized by the Funding Agency Project Manager, shall be reimbursed for performance of the Work. The Funding Agency will not unreasonably delay or withhold subsequent authorization for personnel identified by the Performing Agency to perform the Work, and its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Project Manager's receipt of a written request for authorization from the Performing Agency shall be deemed as authorizing those identified personnel to perform the Work.

1. Chris Armes, Project Manager
2. Ross Swanson, Project Manager
3. Lewis Wardrip, Traffic Engineer

**G. Project Staffing – Funding Agency:** The following Funding Agency personnel are being assigned to perform the Work.

1. Irene Bowers, Sr. Project Manager
2. Brian Lord, Sr. Administrative Specialist
3. Lisa Abuaf, Central City Manager

**H. Approvals.**

1. No work shall be performed and no funds shall be obligated until this Agreement is executed.
2. The Performing Agency is not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work and Budget.
3. The Performing Agency shall not initiate Tasks 3 and 4 without the prior written authorization of the Funding Agency Project Manager.

**I. Project Management.**

1. The Funding Agency Project Manager will provide guidance, prioritization and oversight of PDC's interests involving project scope, schedule, and budget.
2. The Performing Agency Project Manager will oversee the day to day operations associated with the Project. Operations include design oversight, schedule, budget, invoicing, and coordination with regulatory agencies, management of subconsultants, and contract management.
3. Project management between PDC and the Bureau is to be a collaborative effort where all major decisions will be reviewed and discussed between the Funding Agency and Performing Agency Project Managers. Regular coordination meetings with the Project Managers will be scheduled to review budgets, schedule, design, public involvement, and design issues.

4. Project Status Reports are required to be submitted beginning within 60 days after the Effective Date of this Agreement and thereafter with each invoice and at a minimum frequency of four times per year (quarterly). A template report shall be discussed and agreed to as part of the Project's kickoff meeting.

**J. Public Involvement.**

1. Where projects require public involvement, the Bureau and PDC will collaborate on design of the public involvement plan that is endorsed by both project managers.
2. The Bureau and PDC will keep each other informed of written material (e.g., news releases, brochures, newsletters, reports) produced for the Project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.
3. Each project manager will inform the other project manager of inquiry from a media or press representative and make reasonable efforts to consult with the other project manager prior to any verbal or written information on the Project being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.

**K. Meeting Participation.** Each project manager will invite the other to attend all regular or significant Project meetings and to participate in steering, management, or technical advisory committees organized for the Project.

**L. Work Product.** The Funding Agency Project Manager will, upon his or her request, receive timely copies of all work products, including drawings, specifications, designs, draft and final copies of technical and consultant analysis and reports, construction progress reports, and key correspondence prepared or received during the course of the Project.

**M. Subcontractors.** A subcontractor is any other entity that the Performing Agency uses to carry out all or part of the Work.

1. The Performing Agency will have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the Funding Agency Project Manager will be selected through a competitive process. Subcontractors approved by the Funding Agency Project Manager include:
  - a) URS Corporation
  - b) Shiels Oblatz Johnsen
  - c) DKS Associates
  - d) Bluedot Group
  - e) Convergent Pacific
  - f) LTK Engineering Services

2. The Performing Agency and/or any approved subcontractors are not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work and Budget.

**N. Regional Arts & Culture Council (RACC) – Percent for Art Program.** City Code Section 5.74 sets the policy of the City of Portland to dedicate two percent of the total Eligible Costs, as defined by Code, or two percent of the total Eligible Funds, as defined by Code, of all Improvement Projects, as defined by Code, (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, de-accessioning, community education, documentation and registration of Public Art.

1. This Agreement includes Eligible Costs and/or Eligible Funds for work conducted by the Bureau. The Bureau is responsible for fulfilling the requirements.
2. Payments to RACC will be calculated based on the Eligible Costs of an Improvement Project and will be made according to one of three options: payment in full upon signing of this Agreement; payment in full upon issuance of the construction contract; or installation payments upon signing of this Agreement and the construction contract. The parties elect to make payment in full upon issuance of the construction contract. The RACC amount listed in Exhibit A is an estimate for budget purposes. The Bureau will determine full payment calculated on the construction contract which is to be awarded through the construction bid process. A Funding Agency representative will be included in the Selection Panel as per City Code Section 5.74.020.F. A Performing Agency representative will not be included in the Selection Panel as per City Code Section 5.74.020.F.

### **III. FUNDING / COMPENSATION / ALLOWABLE COSTS**

- A.** The Funding Agency shall pay the Performing Agency a sum not to exceed **ONE MILLION NINETY-EIGHT THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$1,098,680) in FY 2013-14 and FOUR HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED SIXTY-SIX DOLLARS (\$425,866) IN FY 2014-15 FOR A TOTAL OF ONE MILLION FIVE HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED FORTY-SIX DOLLARS (\$1,524,546)** for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B.** The funding is from multiple urban renewal areas. PDC reserves the right to adjust amount(s) contributed to the Project from each contributing URA via future amendment to this IGA, and provided the total IGA amount does not exceed the PDC's stated total contribution as shown above.
- C.** If the Project funding spans multiple fiscal years, the PDC will encumber the funds as the funds are approved through budget appropriation. All funding is subject to budget appropriation. If the full amount of funds is not authorized in the current fiscal year's budget, it is acknowledged that contract amounts identified for expenditure in future fiscal years have not been appropriated in the current year budget. If funding has been identified in the Portland Development Commission Five-Year Budget Forecast,

PDC staff agrees to recommend to the PDC Budget Committee that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.

- D. Bureau has accepted a ConnectOregon III grant in the amount of \$1,958,641 for the Project. The Bureau shall be responsible for grant compliance.
- E. The Bureau has received a \$230,000 General Fund commitment in the City's current FY 2013-14 budget. The total Project is estimated at \$3,810,660.
- F. PDC funds shall only be expended on Tax Increment Financing eligible uses, for example, planning for improvements, design and engineering for improvements, and construction of improvements. Costs for operations, maintenance, and moving transit stock are not typically eligible for Tax Increment Financing.
- G. The Performing Agency may seek reimbursement from the Funding Agency for the following costs, subject to the expenditure of these funds for performance of the Work and within the authorized budget. In certain circumstances, such as advance payment to RACC, the Funding Agency Project Manager may authorize a prepayment of future expense obligations.

1. Direct Costs

- a) Personal Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the Work.
- b) Benefit Costs. Covers reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees.
- c) Materials & Services. Covers actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and the Bureau or PDC support staff personal services where the expenditure is for performance of the Work and within the authorized budget.
- d) Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the Work and within the authorized budget.

2. Indirect Costs. Covers reimbursement for overhead costs at the rate established annually, for the Bureau in accordance with City Code Section 5.48 and for PDC in accordance with Cost Recovery Policy through Resolution 6560.

- a) This Agreement was originated in Fiscal Year 2013-14. For that Fiscal Year, the Bureau's rate is 72.13% (Seventy-Two and Thirteen - One Hundredths Percent) of Personal Services and Benefit Costs. The Bureau Indirect costs pay for generally fixed costs related to the administration and operation, as well as program management costs including executive management staff, rent, telephone, power, insurance, office supplies, and equipment.



- b) This Agreement was originated in Fiscal Year 2013-14. *For that Fiscal Year, the PDC rate is \$17.00 per labor hour [SEVENTEEN DOLLARS AND NO ONE HUNDRETHS]* of Personal Services and Benefit Costs billed under this Agreement. PDC Indirect costs pay for generally fixed costs related to the administration and operation of an organization, as well as program management costs including administrative staff, rent, telephone, power, insurance, office supplies and equipment.
- c) If this Agreement extends to a new Fiscal Year, the Performing Agency Contract Manager shall provide written notification to the Funding Agency Contract Manager of the new Fiscal Year rate.
3. The Funding Agency Project Manager shall be immediately notified of any actual or anticipated variance between the authorized budget and the estimated cost or expenditures described in the Scope of Work and Budget. The parties shall then make a good faith effort to negotiate for a successful modification to this Agreement. Unless this Agreement is modified, the Funding Agency shall not be obligated to make payments for costs that exceed the authorized budget.
- H. Expense Costs. Expenses, including personal services, incurred for out of town travel, training, educational expenses and equipment purchase are not reimbursable under this Agreement unless mutually agreed to in advance.
- I. Change Management Controlled by Performing Agency. "Change management" is the process by which the impact of changes is controlled or mitigated and alterations are evaluated, approved, and incorporated into the Scope of Work and Budget. It is required that funds for change management be identified in the Scope of Work and Budget. These funds are intended to be used to accommodate such changes within the specific task or fiscal year. The funds shall be managed by the Performing Agency, which shall notify the project manager and contract manager of the Funding Agency in writing of their use.
- J. Contingency Controlled by Funding Agency. It is required that an amount for project contingency be identified in the Scope of Work and Budget. Communications regarding events that may lead to the usage of the contingency are described in Section V. B. Use of all or part of the contingency must be approved in writing by the Funding Agency, including underlying change orders.

#### IV. BILLING AND PAYMENT PROCEDURE

- A. The Performing Agency shall submit to the Funding Agency Project Manager a separate itemized billing for work performed as described in the Scope of Work and Budget for review and approval at least quarterly.
1. In order to receive timely payment, interim billings must be received no later than thirty (30) days following the end of a billing period.

2. Final billings upon termination or early termination of this Agreement need to be received within sixty (60) days of the date of termination. If no bill or interim Project Status Report is received within this time period, the Funding Agency will have no obligation to honor late billings.
- B.** Each billing shall include a Billing Detail Report in a format created and/or approved by the Funding Agency. At a minimum, each billing shall include:
1. a description of the nature and cost of work accomplished;
  2. the names, rates and hours worked of personnel;
  3. disbursements to consultants, contractors and outside vendors for materials and services; and
  4. any other specific detail or documentation as desired by the Funding Agency Contract Manager, which can be reasonably provided by the Performing Agency.
- C. Reconciliation of the Project Account.** In the event the Project is completed or terminated prior to completion and there remains a balance of funds, such funds shall be allocated pro rata based on the proportion of total Project funds contributed by PDC.
- D.** If billings are received with incomplete information or disputed items, the Funding Agency will advise the Performing Agency in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.

## **V. GENERAL**

### **A. Termination.**

1. The Termination Date of this Agreement is June 30, 2015.
2. Early Termination of Agreement.
  - a) This Agreement may be terminated at any time by mutual written consent.
  - b) Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
  - c) In the event of early termination of this Agreement, the work shall cease promptly and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the Agreement's termination will be reimbursed.

### **B. Change and Conflict Resolution.**

1. Every effort has been made to accurately identify the scope, schedule and budget for the Work. The Performing Agency and the Funding Agency recognize that events and conditions may arise that significantly impact the Project. A "significant" impact is one that may require expenditure of the Funding Agency controlled contingency, increase the budget beyond the total authorized budget

amount shown in the Scope of Work and Budget, or delay completion of this phase of the Project more than one year. Should either party identify or foresee such a circumstance, both parties agree to the following:

- a) As soon as practicable, notify both the project manager and contract manager of the other party in writing of the circumstance, its origin and anticipated or confirmed impact.
- b) Both project managers shall make reasonable efforts to meet within 14 days to identify anticipated or confirmed affects to the Project's scope, schedule and budget.
- c) Both parties shall seek to reach agreement on any necessary revisions to this IGA as described below in Section V. B. 2.

2. If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, all parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.

- a) All conflicts should first be discussed and resolved if at all possible by the project managers specified in Section II.
- b) If the conflict cannot be resolved by the project managers, or involves one of the project managers, then the conflict should be elevated to the contract managers specified in Section II for discussion and resolution.
- c) Any conflicts not resolved by the contract managers shall be elevated to the contract signatories for discussion and resolution.

**C. Compliance with Laws.** In connection with its activities under this Agreement, the parties shall comply with all applicable federal, state and local laws and regulations.

**D. Indemnification.**

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, City agrees to indemnify, hold harmless and defend, PDC, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising out of the activities of City, its officers, employees or agents under this Agreement.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PDC agrees to indemnify, hold harmless and defend, City, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising out of the activities of PDC, its directors, employees or agents under this Agreement.

**E. Subcontracting.** Work under this Agreement shall not be subcontracted in whole or in part to other than City agencies, without the prior written approval of the Funding Agency Project Manager. The Funding Agency will not unreasonably delay or withhold subsequent authorization for contractors identified by the Performing

Agency to perform the Work under the Agreement, and its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Funding Agency Project Manager's receipt of a written request for authorization from the Performing Agency shall be deemed as authorizing those identified contractors to perform the Work. The Performing Agency shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Performing Agency as specified in this Agreement.

Notwithstanding approval by the Funding Agency Project Manager of a subcontractor, the Performing Agency shall remain obligated for full performance hereunder, and the Funding Agency shall incur no obligation to the subcontractor hereunder. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors.

#### **F. Ownership of Work Product.**

Ownership of any and all plan sets, technical data, documents, plans, designs, drawings, technical data reports, specifications, working papers and other materials produced in connection with this Agreement (the "Work Product") will be handled as described below. Ownership of the Work Product includes all rights, title and interest, including but not limited to copyright rights of specified Work Products. Notwithstanding anything to the contrary contained herein, the parties acknowledge that section 17.24.085 of the City Code may require that all or part of the Work Product will become the property of the City and be transferred to the City Engineer upon completion of the Project.

1. Except as described in paragraph 2 below, the Performing Agency shall own all Work Product.
2. If the parties determine that the Performing Agency is unable or unwilling to complete the Project, and the Funding Agency determines that a transfer of ownership of the Work Product is necessary in order to effect completion of the Project, upon the Funding Agency's written request the Performing Agency shall assign ownership of the Work Product to the Funding Agency.
3. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product.

**G. Delivery / Maintenance of Records.** The Performing Agency shall maintain records on a current basis to support its billings to the Funding Agency. The Funding Agency or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Performing Agency regarding its billings or its work hereunder, for a period of 3 years after completion or termination of this Agreement.

#### **H. Funding Acknowledgement / Signage.**

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between the Bureau and the Portland Development Commission and, if appropriate, financed by "*the Portland Development Commission*".

2. For projects involving construction activities funded by PDC, the Bureau shall display a sign near the construction site and readily visible to the public, specifying that the Project is being "*funded by the Portland Development Commission*". The sign shall remain in place until construction is complete.

### **I. Business and Workforce Equity**

1. The Business Equity Program of PDC's Business and Workforce Equity Policy (the "Policy") shall apply if the Project is anticipated to have hard construction costs greater than \$200,000 and PDC's compensation under this Agreement is more than \$100,000. If the Business Equity Program applies, PDC's utilization goal for Emerging Small Businesses and Women and Minority owned-businesses (collectively, "M/W/ESBs") is twenty percent (20%) of the hard construction costs ("PDC's Goal") of the Project (the "Utilization Goal"). The Workforce Equity Program of the Policy shall apply if the Project is anticipated to have hard construction costs greater than \$200,000. If the Workforce Equity Program applies, all subcontracts greater than \$100,000 must comply with the Policy's Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors on the Project are worked by state-registered apprentices and to work toward achieving certain Workforce Goals, as such terms and requirements are further described in the Policy attached hereto as Exhibit C. The Utilization and Workforce Goals described in the Policy are aspirational only. There will be no legal consequence, including but not limited to termination, damages or liquidated damages, on account of the Performing Agency's failure to realize the goals described in the Policy. Nothing in this Agreement shall require the Performing Agency to discriminate in the award of contracts on the basis of race, sex or other impermissible criterion, or otherwise to violate the law. If the Policy applies, information on utilization will be included in monthly Project Status Reports, as described in Section II.I.4 above.
2. Identify any specific goals or other information, for example, for outreach, for design and for construction.

### **VI. Amendments**

1. Except as otherwise provided for in this Agreement, the Bureau or PDC may amend this Agreement only in writing signed by the contract signatories.
2. Changes to the Scope of Work and Budget:
  - a) Changes to the Scope of Work and Budget, including changes to scope, schedule, and budget identified in Section I, which do not increase the total compensation under this Agreement, may be made upon written agreement by the project managers identified in Section II of this Agreement.

- b) Changes will not take effect or be binding on either party until agreed to in writing.

**VII. Merger Clause**

This Agreement contains the entire agreement between PDC and the Bureau. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

[Signature page to follow]

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IN WITNESS WHEREOF, the Bureau and PDC have executed this Agreement as of the Effective Date.

**CITY OF PORTLAND**

**PORTLAND DEVELOPMENT COMMISSION**

\_\_\_\_\_  
Commissioner Steve Novick

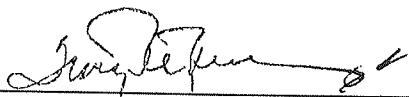
\_\_\_\_\_  
Patrick Quinton, Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:  
APPROVED AS TO FORM

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney **CITY ATTORNEY** 1/28/14

\_\_\_\_\_  
Legal Counsel

***Task 1: Project Management, Administration and Communications***

**Tasks:**

- Conduct biweekly project team meetings, prepare and distribute meeting minutes to all interested parties.
- Attend up to 10 during design development meetings with the City and other stakeholders.
- Coordinate with the project team and other stakeholders in design development.
- Assist in review of project scope and value-engineering ideas.
- Provide necessary information to the City and other stakeholders in support of the project approval process.
- Coordinate design and planning tasks to ensure adequate contract cost control.
- Prepare monthly billings and progress reports (assume 12 through construction).
- Coordinate sub-consultant tasks, review and process invoices for payment.
- Coordinate QA/QC practices to ensure high quality deliverables that are technically sound and complete and addressing project elements and stakeholder requirements.
- Update the project schedule monthly in MS project format to determine if schedule milestones are being met.

***Task 2: Supplemental Survey***

**Tasks:**

- Provide supplemental survey on Montgomery Street between 4<sup>th</sup> and 5<sup>th</sup> Avenues and as needed to provide basemapping for OCS and utility construction.
- Conduct right of way research and prepare right of way maps, exhibits and legal descriptions in coordination with PBOT staff who will procure the required permanent and temporary easements if necessary.
- Prepare exhibits to accompany the legal descriptions.
- Prepare legal descriptions for all permanent and temporary required easements and dedications.
- Record Survey with County Surveyor.

***Task 3: 30% and 60% Civil and Track Design***

**Tasks:**

- Confirm the updated base
- Advance the selected alignment alternative to a 30% level of design such that the project footprint is established and the track alignment is mathematized.
- Coordinate road design/sidewalk design with potential access needs to adjacent properties.
- Prepare and submit a 30% level design and cost estimate for the project.
- Advance the 30% design to a 60% design level. Plans will include horizontal and vertical track alignments, street plan and profile sheets with curb ramps shown,



temporary access scenarios, typical sections and detail sheets, and the general notes sheet.

- Prepare the special track work procurement package including detailed plans, materials list, and specifications. The package will include an estimate of cost.
- Develop the engineers estimate to a 60% level, with a narrative that describes assumptions, methodologies, inclusions and exclusions, and discusses the recommended level of contingencies for this stage.
- Prepare an index of applicable Standard PBOT technical specifications, and anticipated special provisions, as well as anticipated specialty specifications related to the Streetcar track and systems.
- Develop and maintain a Design Review and Comments Log that tracks decision making and resolution of work products and project issues.
- Upon completion of 60% submittal, conduct a preliminary Design Review Meeting with PBOT Team addressing outstanding project issues for resolution, utilizing the Design Review and Comments log.
- Prepare illustrations of project/property impacts to assist in R/W negotiations if necessary.
- PHSA and ADA Review. Complete the PDOT ADA ramp reports for each new corner designed.

#### ***Task 4: Track and Civil Final Design***

##### **Tasks:**

- Advance 60% design to a 100%, PS&E Issue for Bid (IFB) package.
- Provide a review submittal at 90% design level. All plans are complete, specifications are complete with redline edits, and an estimate of costs is complete with all items identified and assigned costs.
- Incorporate review comments on the 90% package into the documents.
- Incorporate any final comments into the IFB document package and prepare for publishing.
- Maintain the Design Review Submittal Log, incorporating/resolving comments as appropriate.
- Monitor corrections and changes to design to comply with responses to design review comments.
- Optimize traffic, streetcar and other transit operations through coordination with the City traffic engineering staff, as well as streetcar operations and TriMet staff.
- Prepare the Project Technical Specifications utilizing PBOT's Standard and Supplemental Special Provisions. Include special provisions for streetcar track and systems.
- Prepare final TP&DT and Signing and Striping Plans for the project, assume two (2) meetings with City of Portland Traffic Engineering staff to review the final plan sheets and allow jurisdictional staff to comment as necessary.
- Generate Safety Certification checklists and audit design for compliance

***Task 5: Overhead Catenary System Design (LTK)***

Provide an OCS design for modifications to the existing OCS for installation of a track crossing with one slip switch at Montgomery and 5<sup>th</sup> Ave, removal of an existing switch on 4<sup>th</sup> Ave and Harrison and double track installation on 4<sup>th</sup> Ave and Montgomery for the Jasmine Block Relocation Project. The work will include the following activities.

- Coordination with track designers, Utility and Civil Engineers, Streetcar Operations, TriMet OCS Maintenance and the City of Portland.
- Provision of a specification description of the OCS work for the Jasmine Block Relocation describing the modifications to the existing OCS arrangement, staging, work restrictions and testing. OCS details and specifications already present in the Streetcar Loop Contract will be referred to as part of this work including specs for OCS components and details. It is assumed that no new specifications will be required for this work outside of the description noted above.
- Provision of OCS wiring layout plans of the OCS work involved in modifying the existing OCS for the Jasmine Block Relocation. The OCS wiring layout plans will show pole locations, new OCS cantilever and cross span layout, modifications to the existing OCS arrangement, and allocation of OCS assemblies and components.
- Provision of OCS staging layout plans of the OCS work involved in modifying the existing OCS for the Jasmine Block Relocation. The OCS staging layout plans will show temporary pole locations and temporary OCS cantilever and cross span layouts necessary to complete the final OCS installation.
- Determination of appropriate OCS poles. Existing OCS poles will be utilized if appropriate and new OCS poles allocated from the stock of existing spare poles where possible. It is assumed that standard Streetcar foundations will be utilized and non-standard streetcar foundations, or foundation depth calculations are not included in this scope. Calculations of wiring and OCS pole loadings shall be provided.
- Provision of designs for new OCS assemblies required for the Jasmine Block Relocation including a component list. OCS assemblies already present in the Streetcar Loop Contract will be referred to as part of this work.
- Review of new OCS pole locations for constructability, utility conflicts, and street lighting pole locations.
- Prepare OCS assembly quantity estimates for the work.

***Task 6: Traction Power and Signal Design (LTK)(MHS)***

Provide a traction power design for the modifications to be installed for the Jasmine Block Relocation Project.

1. Provision of a detailed design of the traction power system showing all manhole, conduit and conductor sizes, conduit stub-up and termination details.
2. The existing traction power system shall be modified to provide safe movement of streetcars through the new crossover interlocking that will be installed near 5th and Montgomery. To the greatest extent possible the re-use of equipment shall be implemented to minimize capital expenditures.
  - Provision of a design program for signal system operation and install program after signal system construction is complete. Signal system testing in conjunction with the signal system installer and City traffic signal staff.
  - Powered switch will be protected with track circuits to prevent switch movements while streetcars are traversing across the switch points.
  - Streetcar signal system details and specifications that are already present in the Streetcar Loop contract will be referred to as part of this work including specs for TWC system components and details for TWC loops). It is assumed that no new specifications will be required for this work outside of the functional description noted above.
  - The Streetcar signal system designer will ensure appropriate streetcar staff have been trained on the proper operation of the streetcar signal system and that they have the necessary software to maintain the system.
  - Develop a cut-over plan and safety testing plan.

***Task 7: Traffic Signal and Lighting Design (DKS)***

**Specific Tasks:**

- Develop signal modification plans for SW 4<sup>th</sup> Avenue and SW Harrison Street.
- Develop signal modification plans for SW 5<sup>th</sup> Avenue and Montgomery Street.
- Develop wiring diagrams.
- Develop lighting plans.
- Incorporate PBOT standard drawings.
- Develop specifications.
- Develop cost estimates.
- 60%, 90% plans, specifications and estimate.
- Incorporate final review comments into IFB PS&E.

***Task 8: Design Support During Construction***

**Tasks:**

- Assist in finalizing Bid Package for advertisement
- Respond to bidder's questions to clarify the bid documents as necessary.
- Attend pre-bid meeting, prepare agenda.
- Prepare and issue addenda if necessary.
- Prepare revised plans and a conformed set for construction if required.
- Assist with bid evaluations for irregularities if desired.

- Attend up to 10 project-related meetings as necessary with City and other agencies and stakeholders.
- Coordinate construction activities, including interface of construction with active streetcar and light rail systems.
- Provide construction engineering assistance to PBOT, including attending the pre-construction conference, design modifications as necessary, responding to RFIs, review shop drawings, observe construction as requested, provide observation logs after all site visits, provide specialty inspections for non-standard construction items, systems, fabrication, etc.
- Attend pre-acceptance walk through and assist with punch list preparation for final project acceptance.
- Prepare as-built drawings.

***Task – Contingency: Design Support During Construction (LTK)***

**Tasks:**

- Additional effort for support from LTK during construction.
- Additional Coordination of construction activities, including interface of construction with active streetcar and light rail systems.
- Provide additional construction engineering assistance to PBOT as needed, including design modifications as necessary, responding to RFIs, review shop drawings, observe construction as requested, provide observation logs after all site visits, provide specialty inspections for non-standard construction items, systems, fabrication, etc.



186472

**EXHIBIT B – RFP NUMBER 116186**  
**WORKFORCE TRAINING & HIRING PROGRAM**  
**Construction Manager/General Contractor (CM/GC) Checklist**

*This program applies to projects estimated at \$200,000 or more and subcontracts of \$100,000 or more*

The following Workforce Training & Hiring Program requirements are a summary of the key contractual obligations of contractors working on City projects. It is the Contractor's responsibility to read and fully understand this section of the bid specifications and to comply with all provisions of the program, regardless of whether they appear on this checklist. Contractors shall include in their bid all costs associated with complying with the Workforce Program. An 18% aspirational goal for minorities, and 9% for females has been set on City funded construction projects for apprentices and journey level workers.

**CHECKLIST:**

**1. CM/GC:**

- A. Submit a Workforce Plan (Exhibit 2) to City prior to Contract award, or as otherwise designated. The Plan should detail your approach and strategies to achieve the targeted workforce goals established by the City.
- B. Submit a Workforce Plan for each subcontractor with a subcontract \$100,000 and above. The Plan should detail the approach and strategies that will be used to achieve the targeted workforce goals established by the City.
- C. Ensure compliance by all subcontractors with subcontracts of \$100,000 or more, and provide them with a copy of the Workforce Training & Hiring Program specifications.

**2. Subcontractors, at all tiers, with contracts of \$100,000 or more:**

- A. Submit a Work Plan (Exhibit 2) prior to beginning work on the project or within 5 days of signing a subcontract, whichever occurs first.

**3. CM/GC & all subcontractors with contracts of \$100,000 or more must:**

- A. Before starting work on this project: Submit proof of registration as a Training Agent with the Bureau of Labor & Industries (BOLI), Apprenticeship & Training Division. Not a BOLI registered training agent? Contact BOLI (971-673-0760) or City of Portland (503-823-5047) for further information.
- B. Throughout the duration of the project:
  - 1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the Prime, and subcontractors with subcontracts of \$100,000 or more, are worked by state registered apprentices. The Prime and subcontractors shall fulfill the 20% apprenticeship requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program, if working in excess of 300 hours in any given trade.
  - 2. Strive in good faith to meet the diversity goals of employing women and minorities (both journey and apprentice level workers).
  - 3. Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the city of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources, as described herein.
  - 4. Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
  - 5. When an apprentice is hired: Notify the City's Contract Compliance Specialist assigned to the

project.

6. Submit the Monthly Employment Report (Exhibit 4) by the 5th of each month to the Owner's Project Manager and the Contract Compliance Specialist. This report will be submitted electronically upon award (via email). For further information, please send an email to: [murmer@portlandoregon.gov](mailto:murmer@portlandoregon.gov).

For additional information or questions, please contact the Contract Compliance Specialist assigned to the project or the City's Workforce Program Coordinator at 503-823-5047.

**WORKFORCE TRAINING AND HIRING PROGRAM**  
**Specifications**

**I. PURPOSE**

**A. General Program Description**

The Portland City Council has directed that all Bureaus and Departments maximize apprenticeship and employment opportunities for minorities, women and economically disadvantaged workers in the construction trades (ref. City Ordinance No. 167374, Feb. 16, 1994 and County Ordinance No. 861, July 11, 1996). Their goals include a) ensuring that the City does business with contractors whose workforce reflects the diversity of the workforce found in the city of Portland and Multnomah County, and b) that their contracting dollars provide fair and equal opportunities to the jurisdictions' diverse populations.

The Workforce Training & Hiring Program ("Workforce Program") is administered for the City of Portland, by the City of Portland, Procurement Services. The Workforce Program applies to all projects estimated at \$200,000 or more and to each subcontractor having a subcontract of \$100,000 or more on the project. The Contractor and all subcontractors are encouraged to fulfill the program requirements even if their contracts are less than these amounts.

Contractors shall make reasonable efforts to ensure that their workforce reflects the diversity of the city of Portland and Multnomah County.

One way contractors can make reasonable efforts to ensure that their workforce is diverse is to recruit, train and employ minorities and women whenever possible. This portion of the Contract establishes requirements regarding that recruitment, training and employment.

**For purposes of the Workforce Program specifications, the following definitions shall apply:**

The "**Contract**" shall mean the contract awarded as a result of these bid specifications.

"**Contractor**" shall mean the CM/GC to whom a Contract is awarded, and any subcontractors with subcontracts of \$100,000 or more.

The term "**minorities**" shall include members of either sex who are African-Americans, Hispanic Americans, Asians or Pacific Islanders, Native Americans or Alaskan Native Americans.

"**Owner**" shall mean the government agency that awarded the Contract, or leveraged public involvement in the project through a loan or development agreement.

The "**project**" shall include all work performed pursuant to the Contract.

**B. Organization of Program Requirements**

The Workforce Program specifications are divided into several parts.

**Section II** - refers to the action the PRIME must take in order to be eligible for award of a contract.

**Section III** - lists the actions that must be taken by the PRIME to meet contractual obligations.

**Section IV** - refers to remedies available to the Owner if a PRIME fails to meet the requirements of the Workforce Program specifications.

**Section V** - refers to the Owner's ability to monitor compliance with the Workforce Program specification by examination of PRIME and subcontractor records.

## **II. ACTIONS REQUIRED PRIOR TO BEGINNING THE PROJECT**

The PRIME shall thoroughly read this Workforce Program specification and commit to perform all requirements described herein. The PRIME shall submit, before work begins, a Work Plan, which demonstrates how the workforce on this project will fulfill all program requirements, including utilization of apprentices and targeted workforce goals.

## **III. ACTIONS REQUIRED TO SATISFY CONTRACTUAL OBLIGATIONS**

### **A. Make Reasonable Efforts to Have Diverse Workforce**

A PRIME must make all necessary and reasonable efforts to have a workforce that reflects the diversity of the city of Portland and Multnomah County and is reasonably consistent with the availability of qualified women and minorities based on Equal Employment Opportunity data supplied by the City. This requirement is in addition to any other requirement of this portion of the Contract.

1. The PRIME and its subcontractors with subcontracts of \$100,000 or more, at any tier level, shall strive to achieve the workforce diversity goal of 18% minority and 9% female hours (including both journey level and apprentice workers) on the project.
2. Provide written documentation of its good faith recruitment efforts. Contractors must follow the process for recruiting apprentices and journey workers described in Section III, subsections F and G of this specification. This process is considered by the City to be the minimum effort to recruit a diverse workforce.
3. The failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall not excuse the Contractor's obligations under this section of the specifications.

### **B. Ensure Compliance by Certain Subcontractors**

1. The PRIME shall ensure that each subcontractor having a subcontract of \$100,000 or more, at any tier, shall comply with all of the provisions of the Workforce Program specifications. Contractors shall include in their price all costs associated with this requirement. No change order will be executed in order for the PRIME to comply with the Workforce Program specifications.
2. The PRIME shall provide a copy of this Workforce Program specification to all subcontractors with contracts of \$100,000 or more executed for the project.

### **C. Register as a Training Agent**

The PRIME shall register with the Oregon Bureau of Labor and Industries (BOLI) as a Training Agent and ensure that all subcontractors who have contracts in the amount of \$100,000 or more are registered as Training Agents. Registration as a Training Agent in a specific trade is not required if there are no training opportunities in that trade on the project, based on the maximum ratio allowed by BOLI.



1. Training programs approved by and registered with BOLI may be used to fulfill training requirements under the Workforce Program specifications. Other training alternatives must be approved by the City's Workforce Program Coordinator.
2. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts, which are not apprenticeable occupations are exempt from the training requirements.
3. Exemptions to the training requirements must be approved by the Owner in writing prior to starting work on the project. Written requests for exemptions related to the training requirements will be considered by the Owner only for extreme circumstances during the course of the project, and must be approved in writing. All requests to exempt all or any portion of the work on a project shall be submitted to the Owner 14 calendar days before any work on the project begins. All exemptions must be approved by the Workforce Program Coordinator. *Please note: Procedures for granting exemptions are subject to change. For the most recent updates, please visit <http://www.portlandonline.com/omf/index.cfm?c=42255&>.*

D. Submit Documentation

The PRIME shall submit documentation regarding the following subjects to the Owner. The Owner's failure to object to documentation submitted by the PRIME or subcontractor shall not relieve them of the requirements of the Workforce Program specifications.

1. ***Training Agent Status***  
The PRIME and all required subcontractors listed on the First Tier Subcontractor Disclosure Form must submit proof to the Contract Compliance Specialist that they are registered Training Agents with BOLI prior to beginning any work on the project.
2. ***Subcontractor Workforce Information***  
Exhibit 2, Work Plan, must also be submitted for each subcontractor with a contract of \$100,000 or more, prior to beginning work on the project or within 5 calendar days after the execution of the applicable subcontract, whichever occurs first. Work by a subcontractor shall not begin prior to submission of such documentation.
3. ***Prime and Subcontractor Reports After Work Begins***  
The Monthly Employment Report (Exhibit 4) must be submitted by the PRIME and any subcontractor having a subcontract of \$100,000 or more to the Contract Compliance Specialist by the 5th day of each month, with a copy to the Owner's Project Manager. The Contractor shall follow the submittal instructions on the report form. All hours subject to prevailing wage rates on public projects, in addition to supervisors, foremen and superintendents, shall be reported on Exhibit 4.
4. A copy of certified payroll reports may be requested by the Owner to verify information in the Report. The payroll reports shall be provided within 7 days of the date when the Contractor receives the request for the payroll.

E. Use of Apprentices

The PRIME shall:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the

project by the PRIME, and subcontractors with subcontracts of \$100,000 or more, are worked by state registered apprentices throughout the duration of the project. The PRIME and subcontractors shall fulfill the 20% apprenticeship requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program, if working in excess of 300 hours in any given trade.

2. Pay all apprentices the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations.
3. Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions.
4. Notify the Contract Compliance Specialist when an apprentice is hired for this project.
5. Count apprentice hours as follows:
  - (a) Hours worked on the project by apprentices enrolled in state-approved apprenticeship programs. If the Contractor is unable to fulfill its 20% requirement, then the Contractor may also use methods (b) and (c) below;
  - (b) 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 employer after completion of training; and
  - (c) Hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice's completion date.

F. Use Apprenticeship Programs for Referrals

Contractors must follow all of these steps in seeking apprentice referrals:

1. Contact the appropriate apprenticeship program or dispatch center to request apprentices who are enrolled in the apprenticeship program; and
2. 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 workforce; and
3. Keep a written record of the request for apprentices, including name of contact person at apprenticeship program, phone, fax, date, time, job location, start date, etc.; and
4. Make reasonable and necessary efforts to recruit apprentice applicants from the Worksource Program at the Oregon Employment Department, and seek to enroll them into an apprenticeship program, if the apprenticeship program is unable to supply an apprentice and if the program is open for applications or allows direct entry from the Oregon Employment Division.

**NOTE:** Contractors may contact the Contract Compliance Specialist for assistance regarding the apprentice referral process, or may utilize Exhibit 3, Request for Apprentice form, to document their efforts.

G. Utilize Unions and Community Organizations When Recruiting For any Positions

When hiring, requesting, recruiting, or replacing workers for this project, the Contractor shall:

1. Make reasonable and necessary efforts to employ a diverse workforce. Such actions should include requests for minority and female applicants. Contractors are notified that direct hiring of employees (such as "walk-ons") without providing notification of that job opportunity, in accordance with paragraph G.2. below, may not constitute a reasonable effort.
2. Document its employment efforts. Documentation should be sufficient to establish the Contractor's efforts, and should include:
  - a) Requests to union halls for signatory contractors;
  - b) Requests to union or open shop apprenticeship programs;
  - c) Requests to the Oregon Employment Division that assist contractors with recruitment and referral of workers.

IV. **CONSEQUENCES OF NONCOMPLIANCE WITH WORKFORCE PROGRAM REQUIREMENTS**

The Owner's commitment to this program is reflected, in part, by the cost of administering the program. Failure to meet the requirements of this section of the specifications negates such funding and impairs the Owner's efforts to promote workforce diversity and to provide fair and equal opportunities to the public as a whole as a result of the expenditure of public funds. Therefore, the parties mutually agree that failure to meet the requirements of this section of the specifications, including but not limited to the submission of required documentation, constitutes a material breach of the Contract.

In the event of a breach of this section of the Contract, 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 PRIME has remedied the breach of Contract. In the event that progress payments are withheld, the PRIME shall not be entitled to interest on said payments.

If a subcontractor(s) is responsible for noncompliance with the Workforce Program requirements, the Owner may choose to withhold only their portion of the progress payment.

B. Retain Sums as Damages for Failure to Comply with Workforce Program Specifications

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for the PRIME's failure to comply with the Workforce Program specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Owner when workforce opportunities are not provided. Therefore, if the PRIME fails to comply with the Workforce Program provisions of this Contract, the PRIME agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours or until the breach of Contract is remedied. Damages may be assessed for failure to meet the 20% apprenticeship training requirements by the PRIME and each required subcontractor in each trade employed. Damages will be calculated based on the training hours not provided at a rate of \$250 per day. For example, if the Contractor was required to provide 200 hours of carpenter training (20% of 1,000 total carpenter hours), and the Contractor only provided 150 training hours, then the difference (50 hours) is divided by 8 (one day of work) to determine the

number of days of undelivered training.  $(50/8 = 6.25 \times \$250 = \$1,562.5)$ .

Damages may also be assessed for failure to fulfill the inclusive hiring process described in Section III, subsections F and G.

These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with the Workforce Program provisions of the Contract.

C. Retain Sums as Liquidated Damages for Delay

The PRIME agrees that any delay to the specified contract time as a result of the PRIME's failure to comply with the requirements of these specifications shall subject the PRIME to the amount of liquidated damages specified elsewhere in the Contract.

D. Notification of Possible Debarment

By executing this Contract, the PRIME agrees that it has been notified that failure to comply with the requirements of this portion of the Contract may lead to the PRIME's disqualification from bidding on and receiving other Owner contracts.

E. Other Remedies

The remedies that are noted above do not limit any other remedies available to the Owner in the event that the PRIME fails to meet the requirements of the Workforce Program specifications.

**V. REVIEW OF RECORDS**

In the event that the Owner reasonably believes that a violation of the requirements of the Workforce Program specifications has occurred, the Owner is entitled to review the books and records of the PRIME and any subcontractors employed on the project to which the requirements of these specifications are applicable to determine whether such a violation has or has not occurred.

In the event that the PRIME or any subcontractor fails to provide the books and records for inspection and copying when requested, such failure shall constitute a material breach of this Contract and permit the imposition of any of the remedies noted in Section IV above, including the withholding of all or part of any progress payment.

**ATTACHMENTS:**

Exhibit 1: Recommended Recruitment & Retention Practices

Exhibit 2: Workforce Plan

Exhibit 3: Request For Apprentice form

Exhibit 4: Monthly Employment/Training Report

Exhibit 5: Apprenticeship Ratio Data

**WorkSource Contact:**

Frank Granger

WorkSource Portland Metro Central

30 N. Webster Street, Suite E

(503) 280-6056

**Questions Regarding Apprenticeship:**

Bureau of Labor & Industries  
Apprenticeship & Training Division  
800 N.E. Oregon St. # 32  
Portland, OR 97232  
(971) 673-0760

**Questions Regarding the Workforce Training & Hiring Program:**

City of Portland / Procurement Services  
1120 SW 5<sup>th</sup> Ave, Room 750  
Portland, OR 97204  
503-823-5047 (main number)

## RECOMMENDED GOOD FAITH RECRUITMENT & RETENTION PRACTICES

### A. Recruitment Efforts

Good faith recruitment efforts are those intense, aggressive, sincere, and result-oriented actions taken by the Contractor designed to accomplish the objectives of the City Workforce Training & Hiring. Good faith recruitment efforts include, but are not limited to:

1. Work aggressively with Contractor's Joint Apprenticeship Training Committee (JATC) to recruit minorities, women and disadvantaged individuals. Provide evidence of these efforts.
2. Assist the JATC by conducting a workshop with minority and women employees to enlist their assistance as recruiters and request their ideas on how to increase employment of underutilized groups.
3. Support the efforts of the Contractor's JATC by giving all apprentices referred to the Contractor a fair chance to perform successfully, allowing for possible lack of previous experience. Recognize that the Contractor is responsible for providing on-the-job training, and that all apprentices should not be expected to have previous experience.
4. Participate in job fairs, school-to-work, and community events to recruit minorities, women, and disadvantaged individuals into the construction trades.
5. Allow scheduled job site visits by participants in community programs, as safety allows, increasing awareness of job and training opportunities in the construction trades.
6. Keep applications of those not selected for an opening. Contact when opening occurs.

### B. Retention Efforts

The Contractor shall endeavor to retain minorities, women, and disadvantaged individuals by implementing steps such as the following:

1. Maintain a harassment-free work place.
2. Ensure that employees are knowledgeable about the company's policies if they need to report a harassment problem.
3. Make reasonable attempts to keep apprentices working and train them in all work processes described in the apprenticeship standards.
4. Review and disseminate, 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.
5. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
6. Take steps to reduce feelings of isolation among minorities and women to curb hostile attitudes and behavior (e.g., have several minorities and women at the job site, provide access to support group system).
7. Provide adequate toilet facilities for women on the job site.
8. Match minority, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a journey-level mentor.

# Workforce Plan

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## Instructions

1. This form must be completed by the prime and each subcontractor with a subcontract of \$100,000 or more.
2. Please state how you plan to perform the work on this project, indicating the number of journey workers and apprentices, by trade.
3. This plan must demonstrate how your company will fulfill all Workforce Training & Hiring Program requirements, including utilization of apprentices, and diversity goals.

Bid #:

Project Name:

Company Name:

Contract Amount: \$

Federal Tax ID:

Prime Contractor: ☐ Subcontractor: ☐

List all Trades to be used on this Project (one trade, per line)	Total # of Journey Workers	Total # of Apprentices	Total # of Female Workers	Total # of Minority Workers	# and level of New Hires (i.e. 1A or 1J)	Anticipated Start Date	Estimated Total Hours (all workers in each trade)

Please list the apprentices who will work on this project. If you need more space, attach an additional sheet of paper. Compliance Staff must approve all apprentices on the project.

Name of Apprentice	Trade	Race	Gender	Date of Hire	STAFF USE ONLY

If no current apprentices, indicate when and how they will be hired:

Name of Workforce Plan Administrator (for Apprentice/Diversity Goals):

Phone:

Fax:

E-mail address ? Phone number:

Are you a registered Training Agent? ☐ Yes ☐ NoAre you a Union or Open Shop Contractor? ☐ Union ☐ Open Shop

Which JATC dispatches apprentices to your company?

Name:

Phone:

Fax:

Name:

Phone:

Fax:

Please answer the following questions concerning your efforts to achieve the diversity goals on this project:

1. How do you plan to achieve the diversity goals on this project?
2. Other than your JATC, what resources will you use to recruit minority and female workers for this project (please check all that apply)?
 

<input type="checkbox"/> Oregon Tradeswomen	<input type="checkbox"/> ETAP	<input type="checkbox"/> Portland YouthBuilders
<input type="checkbox"/> Constructing Hope	<input type="checkbox"/> Job Corps	<input type="checkbox"/> Other
3. Do you need any assistance with meeting the apprenticeship requirements or diversity goals on this project?
 

<input type="checkbox"/> Yes	<input type="checkbox"/> No
------------------------------	-----------------------------

Prepared By (print):

Signature:

Date:

Send to:

City of Portland, Bureau of Internal Business Services, Procurement Services  
 1120 S.W. Fifth Avenue #750, Portland, OR 97204  
 Phone (503) 823-5047 or FAX (503) 823-5539

## Request For Apprenticeship

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**CONTRACTOR:** Please complete & fax/send this *Request For Apprenticeship* to your apprenticeship committee. Ask them to complete the boxed portion below explaining their response to your request and fax/send to us at address below.

**FAX TO:** \_\_\_\_\_ / \_\_\_\_\_  
 (Apprenticeship Committee) (Contact/ Dispatcher)

Fax Number: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

**Request From:**

Company Name: \_\_\_\_\_ / \_\_\_\_\_  
 (Registered Training Agent) (Contact Person)

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

**Apprentice Request:**

As a registered Training Agent, I am using this form to request referral of an apprentice for employment with my company in cooperation with the City Workforce Training & Hiring Program. I would like to continue to diversify my workforce. Therefore, please refer ethnic minorities and women for my consideration.

Apprentice referral is needed by this date: \_\_\_\_\_ Work Starts: \_\_\_\_\_

Job Site Location: \_\_\_\_\_ Expected Length of Employment: \_\_\_\_\_

Bid # and Project Name: \_\_\_\_\_ Owner: City of Portland

Number of Apprentices: \_\_\_\_\_ Trade/Occupation: \_\_\_\_\_

Number of Apprentices: \_\_\_\_\_ Trade/Occupation: \_\_\_\_\_

Minimum qualifications (if different from apprenticeship standards): \_\_\_\_\_

Safety needs: ☐ Hard hat ☐ Gloves ☐ Hard-toed boots ☐ Other \_\_\_\_\_

**Apprenticeship Committee Instructions:**

*Please complete and fax to City Workforce Program at: 503-823-6865*

☐ We were able to dispatch an apprentice to the project listed above.  
 Name of Apprentice \_\_\_\_\_ Race *A (Asian-American)* Gender *M* Term \_\_\_\_\_

☐ We were unable to dispatch an apprentice to the project listed above because:  
 \_\_\_\_\_  
 \_\_\_\_\_

**Contractor: Please FAX/Send to:** City of Portland Workforce Training & Hiring Program  
 1120 SW 5th Ave. Rm 750, Portland, OR 97204  
 Phone: (503) 823-5047 / FAX: (503) 823-6865



## MONTHLY EMPLOYMENT REPORT

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mer.xls [Compatibility Mode] - Microsoft Excel

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	A	B	E	F	G	H	I
1	<b>MONTHLY EMPLOYMENT REPORT</b>						
2							
3	<b>COMPANY NAME</b>	<b>FEDERAL TAX ID</b>	<b>MONTH ENDING</b>	<b>BIDNO</b>	<b>PRIME?</b>	<b>FINAL REPORT?</b>	
4							
5							
6	<p>The Monthly Employment/Training Report must be completed by the prime contractor and all subcontractors with contracts of \$100,000 or more. The prime contractor shall submit a report for its workforce on the project. Each subcontractor shall separately submit a report for its workforce on the project. It is the responsibility of the prime contractor to assure that all subcontractors submit Monthly Employment/Training Reports in a timely manner.</p> <p>Complete the form on the worksheet titled MER (third tab), filling in all categories for each employee working on the project during the reporting period.</p> <p>Email the completed worksheet as an Excel attachment to <a href="mailto:mur-mer@portlandoregon.gov">mur-mer@portlandoregon.gov</a> no later than the 5th of each month for work performed during the previous month. The emailed worksheet must be titled <b>mer.xls</b>.</p> <p>Please do not change the worksheet's layout or contents.</p> <p>Please direct questions about electronic data submission to the same email address.</p>						
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21	REVISED 3.11.11						

mer.xls [Compatibility Mode]

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	A	B	C	D	E	F	G	H	I	J	K	L	M
1	<b>FEDID</b>	<b>MONTHENDING</b>	<b>BIDNO</b>	<b>LASTNAME</b>	<b>FIRSTNAME</b>	<b>ZIP</b>	<b>SSN</b>	<b>JOBCLASS</b>	<b>LEVEL</b>	<b>RACE</b>	<b>GENDER</b>	<b>HOURS</b>	<b>PRIME?</b>
2	123456789	8/31/2002	100758	DOE	JANE	97214	9874	1010	A	C	F	32	NO
3	123456789	8/31/2002	100758	DOE	JOHN	97204	7489	1018	J	C	M	154	NO
4													
5													
6													

\*Ratios may change pursuant to actions taken by the Oregon State Apprenticeship & Training Council/BOLI. For the purposes of this contract, the ratios approved by BOLI on the date the bid is advertised shall prevail.

TRADE

## APPRENTICE TO JOURNEY RATIO\*

186472

	<u>1<sup>st</sup> Apprentice</u>	<u>2<sup>nd</sup> Apprentice</u>	<u>Max</u>
Asbestos/Insulation Workers	1/1	1/4	
Brick/Marble/Terrazzo/Tile Finisher	1/1	1/3	
Bricklayer/Masonry	1/1	1/3	
Carpenter (Portland)	1/1	1/1	
Carpet Installers/Floorlayers	1/1	1/3	1/1 for first three apprentices; 1/5 after
Cement Masons	1/2 (1/1 Open Shop)	1/3	
Drywall Applicator (Ext/Int Specialists)	1/1	1/1	1/1 for the first three apprentices; 1/5 thereafter
Drywall Finisher (Taper)	1/1	1/3	1/3 thereafter
Electricians			
Inside	1/1	1/3	Allowed 2 apprentices for every 3 journey
Limited Energy/Limited Residential	1/1	1/1	
Construction Lineman	1/1		
Limited Maintenance	1/1	1/2	Max. 2 apprentices a crew/subject to conditions
Stationary Engineer	1/1	1/3	
Elevator Contractor	1/1	1/3	
Environmental Control System (HVAC)	1/1	1/1	Additional apprentices at 1/3
Glass Installer (Glazier)	1/1	1/3	
Hod Carrier/Mason Tender	1/1	1/5	
Iron Worker	1/1	1/3	
Laborer (Construction)	1/1	1/5 (1/3 open shop)	1/10 Union – 10 max
Maintenance Mechanic	1/1	1/3	
Millwright	1/1		
Operating Engineer (Heavy)	1/1-4	2/5-9	1/1 for first three apprentices, 1/5 after
Painting & Sandblasting	1/1	1/3	3/10-19 4/20-24 5/25-29
Painting (Traffic Control)	1/1	1/4	30 or more 1/for each 5 additional operators
Pile Drivers	1/1	1/1	
Pipe Fitters	1/1	1/1	1/1 for first three apprentices, 1/5 thereafter
Plasterers	1/1	1/3	1/3 thereafter
Plumber	1/1	1/1	
Roofer	1/1	1/1	1/1 for first two apprentices, 1/3 after
Scaffold Erector	1/1		
Sheet Metal Worker	1/1	1/1	1/1 for the first five apprentices; 1/5 thereafter
Sheet metal Worker (Residential)	1/1	1/3	1/1 for first two apprentices, 1/3
Sign Maker/Erector	1/1	1/1	
Sprinkler Fitter	1/1	1/1	
Steamfitters	1/1	1/1	1/1 for the first two apprentices on the job; 1/3 thereafter
Terrazzo Worker	1/1	1/3	
Tile/Marble Setter	1/1	1/3	
Truck Driver (Heavy)	1/1	1/1	