

**EXHIBIT A - Kelly Butte Reservoir GMP**Contractor **HOFFMAN CONSTRUCTION COMPANY**SAP Project # **W01424**Date: **08/28/12**

Description	Project Cost	Cost
<b>DIVISION 1 -- JOB REQUIREMENTS</b>		<b>\$1,723,353</b>
<b>DIVISION 2 -- EXISTING CONDITIONS</b>		<b>\$1,654,944</b>
<b>DIVISION 3 -- CONCRETE</b>		<b>\$13,521,697</b>
<b>DIVISION 4 -- MASONRY</b>		<b>\$8,601</b>
<b>DIVISION 5 -- METALS</b>		<b>\$491,050</b>
<b>DIVISION 7 -- THERMAL AND MOISTURE PROTECTION</b>		<b>\$1,590,933</b>
<b>DIVISION 8 -- DOORS AND WINDOWS</b>		<b>\$13,900</b>
<b>DIVISION 9 -- FINISHES</b>		<b>\$40,400</b>
<b>DIVISION 10 -- SPECIALTIES</b>		<b>\$12,685</b>
<b>MECHANICAL SERVICES SUBGROUP</b>		<b>\$7,868,831</b>
<b>ELECTRICAL SERVICES SUBGROUP</b>		<b>\$1,542,203</b>
<b>SITE / INFRASTRUCTURE SUBGROUP</b>		<b>\$9,854,490</b>
<b>SUBTOTAL</b>	<b>\$38,323,088</b>	<b>\$38,323,088</b>
<b>GENERAL CONDITIONS/INSURANCE</b>		<b>\$8,112,260</b>
General Conditions		
Sub-guard Program	\$7,788,847	
Hoffman Bond (w/ CM/GC Fee)	\$323,413	
Builder's Risk (Covered in OCIP)	\$0	
Project Insurance (Covered in OCIP)	\$0	
<b>CMGC FEE (3.26%)</b>	<b>\$1,599,819</b>	<b>\$1,599,819</b>
<b>SUBTOTAL</b>	<b>\$48,035,167</b>	<b>\$48,035,167</b>
<b>DESIGN &amp; ESTIMATING CONTINGENCY</b>	<b>\$383,231</b>	<b>\$383,231</b>
<b>CMGC CONTINGENCY</b>	<b>\$1,149,693</b>	<b>\$1,149,693</b>
<b>ESCALATION-MIDPOINT OF CONSTRUCTION APRIL 2013</b>	<b>\$1,429,346</b>	<b>\$1,429,346</b>
<b>Hoffman Total with contingencies</b>	<b>\$50,998,000</b>	<b>\$50,998,000</b>
<b>Owner Allowances (for work not incl. above, but scope not limited to the following)</b>		
Special Inspection	\$300,000	\$300,000
Safety Enhancements	\$50,000	\$50,000
Contaminated Sand Tipping Fees	\$900,000	\$900,000
Tank Demo Tipping Fees	\$1,000,000	\$1,000,000
Large Valves and Actuators	\$1,200,000	\$1,200,000
Security Cameras	\$75,000	\$75,000
Over Excavation	\$350,000	\$350,000
Permitting Requirements	\$750,000	\$750,000
Mitigations	\$750,000	\$750,000
CBA Fees (@ 1% of Contract Value)	\$527,000	\$527,000
Hoffman CBA Admin	\$350,000	\$350,000
<b>Total Owner Allowances</b>	<b>\$6,252,000</b>	<b>\$6,252,000</b>
<b>GMP TOTAL</b>	<b>\$57,250,000</b>	<b>\$57,250,000</b>

# **COMMUNITY BENEFITS AGREEMENT**

**KELLY BUTTE RESERVOIR PROJECT  
AUGUST 29, 2012 DRAFT**

# **Community Benefits Agreement – Kelly Butte Reservoir Project**

## **TABLE OF CONTENTS**

Preamble .....	1
ARTICLE I - Purpose .....	2
ARTICLE II – Scope of Agreement .....	3
ARTICLE III – Exclusive Representation and Authority.....	5
ARTICLE IV – Jurisdictional Disputes .....	5
4.1 Assignment of Work .....	5
4.2 Dispute Resolution.....	5
4.3 No Disruptions.....	5
ARTICLE V – No Disruptions .....	6
5.1 No Disruptions.....	6
5.2 Dispute Resolution.....	6
5.3 Grievance Procedure.....	6
ARTICLE VI - Subcontracting.....	8
ARTICLE VII – Hiring Procedures .....	9
ARTICLE VIII – Wage Rates and Fringe Benefits .....	10
ARTICLE IX – Labor – Management – Community Oversight Committee .....	12
9.1 Labor-Management-Community Oversight Committee Purpose and Objectives .....	12
9.2 Membership .....	12
9.3 Compliance Monitoring.....	13
9.4 Arbitrator.....	13
9.5 Dispute Resolution.....	13

9.6 Program Administration.....	13
ARTICLE X – Community Apprenticeship Goals.....	13
10.1 Apprenticeship Hours .....	13
10.2 Alternative Methods to Fulfill Requirement.....	14
10.3 Apprenticeship Diversity .....	14
10.4 Outreach, Training and Retention Strategies .....	15
10.5 Community Construction Training, Outreach and Recruitment Fund.....	15
ARTICLE XI – Community Workforce Goals.....	16
11.1 Workforce Diversity .....	16
11.2 Recruitment and Retention Strategies.....	16
11.3 Failure to Meet Goals.....	18
ARTICLE XII – Local Workforce Goals .....	18
12.1 HUBZone Hiring .....	18
ARTICLE XIII – Community Contracting Goals .....	18
13.1 Subcontractor Goals.....	18
13.2 Technical Assistance Fund .....	19
13.3 Mentoring .....	19
13.4 Segmentation.....	19
13.5 Price Efficiency.....	19
13.6 Implementation .....	20
13.7 Documentation.....	20
13.8 Exclusive Representation and Authority .....	20
ARTICLE XIV – Helmets to Hardhats.....	20

ARTICLE XV – Reporting Requirements.....	21
ARTICLE XVI - Compliance.....	22
16.1 Breach .....	22
16.2 Remedies for Breach.....	22
ARTICLE XVII - Severability.....	23

This Community Benefits Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Portland ("Owner"); Hoffman Construction Company of Oregon ("Project Contractor") on behalf of all contractors and subcontractors of all tiers (hereinafter identified collectively as the "Employer" or "Employers"), the \_\_\_\_\_ (hereinafter identified collectively as the "Union" or "Unions") to set out uniform standard working conditions for the efficient performance of construction work on the Kelly Butte Reservoir Project of Owner (hereinafter identified as the "Project") and the assurance that public money spent by the Owner benefits its goals of providing beneficial working conditions and increased workforce and contracting diversity on its construction projects.

### **PREAMBLE**

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 Unions, Employers, Project Contractor and the Owner (hereinafter identified collectively as the "Parties") recognize that strikes, pickets, work stoppages, slowdowns, lock outs, or other labor disruptions on Owner's construction projects significantly hinder the ability of Owner to achieve its institutional mission.

Whereas, the Parties recognize that 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 responding to its Invitations to Bid, including all prime contractors and subcontractors, with the corresponding right to hire or reject such potential contractors on its public works projects.

Whereas, the Parties recognize that securing the contracting diversity and apprenticeship objectives of this Agreement should not impose undue administrative burdens on Owner, or its contractors and subcontractors.

Whereas all of the Parties recognize that they play an integral and critical role in ensuring that historically underrepresented racial or ethnic minorities and women be fairly represented in the building trades and to be fairly represented in the project's use of contractors and subcontractors.

**NOW, THEREFORE, IT IS AGREED:**

**ARTICLE I**  
**Purpose**

**1.1** The purpose of this Agreement is to ensure that the public served by the Owner receives the fullest benefit of the public works construction project undertaken by the Owner, to ensure that the Owner does not indirectly perpetuate the under-inclusion of racial and ethnic minorities and women in the construction industry and trades, and to ensure that the Owner receives the benefit of a highly skilled, well-trained and diverse workforce and prime contractor and subcontractor pool without the disruptions caused by labor unrest, including strikes, lock-outs, pickets, and other disruptions in the progress of such projects.

**1.2** The Parties to this Agreement acknowledge that the construction of the Kelly Butte Reservoir Project is a critical part of the Portland Water Bureau's approved plan to provide safe, adequate, in-town terminal storage facilities. This project increases the storage capacity at Kelly Butte by replacing the existing 10 million gallon above-ground steel reservoir with a new buried 25 million gallon reinforced concrete reservoir. Further, this project has an Environmental Protection Agency (EPA) approved schedule to comply with the EPA's "Long Term 2 Enhanced Surface Water Treatment Rule to disconnect the City's open reservoirs. The Parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management-community cooperation and stability.

**1.3** The Parties agree that 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. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

**1.4** Further, the Parties desire to mutually establish and stabilize wages, hours and working conditions for the craftworkers on this construction project, to encourage close cooperation between the Parties to the end that a satisfactory, continuous and harmonious relationship will exist between the Parties to this Agreement.

**1.5** Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the Parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Employer(s) agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

**1.6** The Parties further understand and agree that circumstances may arise which were not anticipated that could cause unforeseen difficulties for owners, labor or community. In such case

all signatories agree to work with the Labor-Management-Community Oversight Committee (hereinafter "Committee") to resolve these issues, including the option of amending this Agreement at any time if necessary. If an amendment of this Agreement is proposed before the project is complete, the amendment must be adopted by unanimous consent of Parties representatives on the Committee and cannot alter existing contracts on the Project without the consent of all the signatory parties to the contracts.

1.7 The Parties agree that, as used herein, the term "good-faith efforts" is defined as an honest and genuine effort to meet the obligations imposed by this Agreement, free from any intention or effort to avoid by any means such obligations. The requirement of "good-faith efforts" shall also include the obligation to take all objective and verifiable steps outlined in the plans and strategies developed pursuant to Articles X, XI, XII, and XIII of this Agreement.

## **ARTICLE II**

### **Scope of Agreement**

2.1 This Agreement shall cover and be applied to all new construction, rehabilitation, alteration, conversion, extension, painting, repair, improvement or other construction work performed at the Project site that is contracted by the Employers and is generally described as "Kelly Butte Reservoir Project".

2.2 The terms of this Agreement shall also apply to that work performed at temporary facilities, such as fabrication yards and/or assembly plants located at or adjacent to the Project site, which are integrated with and set up for, the purpose of servicing the construction project rather than to serve the public generally.

2.3 This Agreement shall supersede all other labor agreements between the Parties or between any Employer and any Union for work covered herein except that if any craft's relevant Local Master Collective Bargaining Agreement (CBA) does not contain provisions that are covered by this Agreement, such CBA provisions shall bind the parties to the CBA and the employees covered thereby. Attached to and inclusive of this Agreement are copies of all relevant signatory Unions' current Local Master CBAs which shall constitute addenda to this Agreement and may be modified from time to time during the course of the Project.

2.4 In the event a signatory unions' CBA is subject to negotiation during the term of this Agreement, the terms and provisions of the expired contract shall be maintained in effect until such time as the Owner, Project Contractor and Employers are notified in writing of the changes made and the ratification of the modified CBA, subject to Article VIII of this Agreement. Upon such notification, the changes shall be recognized and made effective on the Project under the same terms and effective date(s) as for the parties to the CBA. This includes retroactivity, where applicable.

2.5 The provisions of this Agreement shall apply to the Parties performing work covered by the provisions of this Agreement and notice shall be included in all contracts and/or subcontracts at every tier level pertaining to the Project. This Agreement shall only be binding on the



signatory parties hereto, and shall not apply to their parents, affiliates or subsidiaries provided they are not employed on the Project, or any other project.

**2.6** This Agreement shall be subordinate to any and all stipulated requirements in the relevant statutes enabling funding for financing of the Project.

**2.7** This Agreement shall not apply to work of superintendents, supervisors (non-trade working), staff engineers or designers; quality control and quality assurance personnel; timekeepers; clerks; office workers, including messengers, guards, safety personnel, emergency medical and first aid technicians; and other professional, engineering, administrative, environmental compliance employees and other non-construction trade labor which may be identified during the course of the Project, including but not limited to:

- a. Artists retained by the Owner, during the course of the Project and the work performed by the artists that does not involve work defined under the Bureau of Labor and Industries (BOLI) Prevailing Wage Scopes of Work classifications.
- b. Furniture, fixture and equipment installers retained by the Owner to be performed after signatory Employers have completed construction related work and or contract completion date.
- c. Employers and their Employees or other Contractors directly controlled by the Owner.
- d. Employees engaged in any work performed on or near, or leading to or into, the Project site by state, county, city or other governmental bodies, their other retained contractors, or by public utilities or their contractors, or by other public agencies or their contractors.
- e. Employees engaged in maintenance on, installation of, and/or removal of leased equipment and on-site supervision of such work.
- f. Employees engaged in warranty functions and warranty work, and on-site supervision of such work.
- g. Employees making deliveries to the Project.
- h. Employees fabricating, manufacturing or assembling products, materials and/or supplies away from the Project site.
- i. Specialty Contractors required to be prequalified by the Owner in the Contract Documents, such as large diameter pipe contractor.

**2.8** Nothing contained herein shall be construed to prohibit or restrict the Owner, or their employees from performing work not covered by this Agreement on the Project site. As areas and systems of the Project are inspected and construction tested by the Project Contractor and

accepted by the Owner, the Agreement shall not have further force or effect on such items or areas, except when and if, the Project Contractor is directed by the Owner to engage in repairs, modifications, and checkout.

2.9 The provisions of this Agreement shall apply to the construction of the named Project, notwithstanding the provisions of local, area and/or national agreements which may conflict or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a conflicting provision of a collective bargaining agreement, the provisions of this Agreement shall "prevail": otherwise the terms of applicable collective bargaining agreements shall apply except that the work of the International Union of Elevator Constructors on this Project shall be performed under the terms of its National Agreements, with the exception of Article V and Article IX, Sections 9.4 and 9.5 of this Agreement, which shall apply to such work.

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

### **ARTICLE III** **Exclusive Representation and Authority**

3.1 The Owner recognizes that the signatory Unions to this Agreement are the sole and exclusive bargaining representatives of all employees within the respective jurisdictions for the Project covered by this Agreement, except those excluded in Article II. This Article shall not alter the pre-existing legal status of any bargaining relationship between any individual Employer and the Union.

3.2 The Unions and Employers recognize that the Employer retains and shall exercise full and exclusive authority for the management of its operations. The Project Contractor remains the sole judge in determining the competency and qualifications of all firms responding to its Invitation to Bid or alternative procurement method (best value) at every level. The Project Contractor has the absolute right to select any qualified bidder for the award of contracts on this Project provided that, such bidder shall be willing, ready, and able to execute and comply with this Agreement for the craft worker(s) that it employs in all work classifications for the Project for the duration of the Project. All Employers at every tier level performing work on this Project shall have a pre-job conference prior to beginning work with the Union(s) representing the craft worker(s) they intend to employ to discuss manpower, work dates, key employees including foremen, etc. The only exception to this provision is contained in Section 7.5.

### **ARTICLE IV** **Jurisdictional Disputes**

4.1 **Assignment of Work** – The assignment of work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with BOLI guidelines and the Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

**4.2 Dispute Resolution** – All jurisdictional disputes of this Project, between or among Unions and employees parties to this Agreement shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Union parties to this Agreement.

**4.3 No Disruptions** – All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

## **ARTICLE V** **No Disruptions**

**5.1 No Disruptions** – During the term of this Agreement, there shall be no strikes, pickets, work stoppages, slowdowns or other disruptive activity for any reason by the Unions or their members, and there shall be no lock out by the Employers. The Unions and Employers agree that they shall not incite or encourage participation in any such disruptive activity and shall undertake all reasonable means to prevent or terminate it. Participation by an employee or group of employees, in an act violating the foregoing provision will be cause for discharge, removal, or cancellation of contract by the Owner and/or Project Contractor. If there is any strike, work stoppage, slowdown, picketline, or other disruption in violation of this Agreement by any craft signatory, it is agreed that the other crafts shall be bound to ignore and shall not participate in such disruption and shall continue to staff the Project without interruption.

In the event the Project is not completed by the termination date of an applicable Local Master Collective Bargaining Agreement, the Union(s) agree that they will not strike the affected Employer(s), will not cause any job disruption of any kind on the Project, and that the expired Collective Bargaining Agreement shall remain in full force and effect for purposes of the Project until a new or modified Collective Bargaining Agreement is executed between such Union(s) and Employer(s).

**5.2 Dispute Resolution** – The parties agree to establish a Committee as set forth in Article IX, which will ensure the effective and binding settlement of labor misunderstandings, disputes or grievances that may arise between Employers, the Unions, or their members. Thereby the Owner, the Employer and the Unions are assured of complete continuity of operation without slowdown or interruption.

**5.3 Grievance Procedure** – The Employers, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article. When a Union and Employer have a

collective bargaining agreement, they may mutually agree to use the grievance procedure contained in said collective bargaining agreement (CBA) (to distinguish from this Agreement).

Any question or dispute arising out of and during the term of this Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Employer stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Employer and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Employer shall keep the meeting minutes and shall respond to the Union representative in writing, copying the Project Contractor and Owner, at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Union(s) or the Project Contractor or any Employer have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Union Representative and the involved Employer shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Employer and a copy provided to the Project Contractor and Owner. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Employer and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the American Arbitration Association shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Employer and the involved Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

## **ARTICLE VI**

### **Subcontracting**

The Project Contractor agrees that neither it nor any of its Employers will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement, and except Employers that are exempt to the Agreement as identified in Article II. Any contractor or subcontractor subject to this Agreement, working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

**ARTICLE VII**  
**Hiring Procedures**

7.1 The Employers agree to notify the Unions of all opportunities for employment on the Project. Nothing in this Agreement shall be deemed to limit an Employer's right to reject proposed employees or to use their own Core Employees (see 7.5). The Employer shall have 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. The Employer shall also have the right to reject any applicant referred by a union for any reason provided that such right is exercised in good faith, and in a nondiscriminatory manner subject to the diversity goals established in Articles X, XI, XII, XIII, and XIV.

7.2 The Employer shall request and the Union shall refer applicants for the various journeymen and apprentice classifications covered by this Agreement as required by the employer on its projects in accordance with each crafts local master CBA except as specified in Section 7.5.

7.3 The Union represents that its local unions administer and control their referrals in a nondiscriminatory manner and in full compliance with the Federal, state and local laws and regulations which require equal employment opportunities and non-discrimination and the diversity provisions of this Agreement contained in Articles X, XI, XII, XIII, and XIV.

7.4 It is the intent of the parties to promote the use of locally available, skilled craft labor provided through the local hiring halls and in compliance with the Local Hiring provisions contained in Article XII except as specified in Section 7.5.

7.5 Employers which do not have a collective bargaining relationship with the Unions signatory to this Agreement who become successful bidders on this project may employ their own Core Employees. "Core Employees" in this context refers to craft workers only including working foremen, lead (journeymen), working owner-operators, and apprentices and shall not be supervisory, management or non-working owners of non-signatory contractors.

- a. It is agreed by the Parties that the intent of the Core Employee definition is to protect fair and legal employment standards, and to secure opportunities for contractors, regular employees, and union craft workers.
- b. There shall be no limit on the use of Core Employees no requirement to pay union benefits for certified Disadvantaged Business Enterprise (DBE) Contractors. However, they are governed by the Contract Documents and BOLI and must pay prevailing wages.
- c. DBE Core Employee benefits shall be in accordance with Article 8.6.
- d. For non-union Employers not certified under the DBE classifications, the limits on Core Employees shall be as follows: the first two workers may be Core Employees; the next two shall be union referrals. Thereafter, dispatch may alternate every other between Core

Employees and union referrals, with the Core Employee number not to exceed 50% plus one worker of the Employer's craft workforce. Core Employee benefits will be in accordance with Article 8.5. This does not apply to Employers exempt under Article II.

- e. Employees of non-DBE Employers shall be deemed Core Employees if they have been on the Employer's payroll prior to the execution of the Construction Services Contract for the Project, and on the Employer's active payroll a minimum of 60 days prior to the Employer's start of work on the Project. Employees of DBE Employers shall be deemed Core Employees if they have been on the Employer's payroll prior to the execution of the Construction Services Contract the Project. Core Employees shall meet the minimum journey or apprentice level qualifications of the craft they are performing, where required, and shall hold all required licenses and certifications for the work of their craft, if licenses and certifications are required by law.
- f. The Committee shall examine the data regarding each use of Core Employees and may agree to changes to the minimum number of hours an employee would have to have to be on the Employer's payroll to be deemed a Core Employee. The vote of the Committee must be unanimous.
- g. The Committee may waive the definition of Core Employee based upon the Employer's craft needs and past practice. The vote of the Committee must be unanimous.
- h. Non-Core Employees shall be hired according to the appropriate union referral procedures.

**7.6** It is agreed and understood that those specific terms and conditions governing, hiring and assignment of current union trade workers to supplement Core Employees proposed for the project may be negotiated jointly by the Employer, and the appropriate trade union representatives.

**7.7** It is agreed and understood by all parties that a drug-free workplace is of the highest priority and the owners and employers retain their rights to comply with their established drug testing policies and practices. Employers shall be bound by Project Contractor's Site Specific Health and Safety Plan and Drug and Alcohol Policy.

## **ARTICLE VIII**

### **Wage Rates and Fringe Benefits**

**8.1** The Employer recognizes the applicable Prevailing Wage Rates in effect at the time of bid. The minimum wage scale for the duration of the work will be fixed at the then current and applicable Prevailing Wage Rate as determined by OAR 839-025-0020(6).

**8.2** In the event of nonpayment of wages despite the Unions reasonable attempts to collect from the Employer, the Union will not be considered in violation of Article V should a work stoppage occur.

**8.3** The Employer will be furnished appropriate trust documents by the Union covering funds into which contributions shall be made. The Employers will contribute to, and hereby becomes party to and is bound by bona fide pension, vacation, health and welfare, apprenticeship and training funds covering employees under this Agreement, Industry Advancement or Promotion Funds called for in the Area Master CBAs may be paid at the discretion of the Employer.

**8.4** The Employers agree that all wages shall be subject to deduction for collection of Union dues, regardless of whether an employee is a member of a union, except for Core Employees and exempt parties as defined in Article I. The Union will not require initiation fees from a non-union Employer's Core Employees. Such deductions from the wages of non-union employees shall not be more than the amount necessary to cover the union's costs of collective bargaining, contract administration, and grievance adjustment. The Employers shall be required to pay contributions to Union employee benefit funds for non-union "core" employees only if the employee benefits immediately accrue to the direct benefit of such employees and do not require membership in the Union. Core Employees who do not participate in a specific Union benefit fund must have the benefit amount paid into a similar benefit fund that provides immediate benefit to the employee (see 8.5 Core Employee Benefit Program). Employers shall provide information to Project Contractor regarding wages and dues, and must submit weekly certified payrolls to Project Contractor and Owner.

**8.5** Core Employee Benefit Program. The Parties recognize the Owner's commitment to provide opportunities on the Project for contractors which may not have previously had a relationship with the Unions signatory to this Agreement. To ensure that Employers have the ability to employ their Core Employees on the Project without providing duplicate benefits to their Core Employees, such Employers may request a waiver of contributions to the appropriate Union Trust Funds, provided that the following requirements have been met:

- a. Such request shall be made to the Committee in writing.
- b. A copy of the Employer's medical, retirement, training, and any other fringe benefit program, along with Employer and employee costs for such programs, has been submitted to the Committee along with request for waiver.
- c. The medical, retirement, training and other fringe benefit programs were in existence at least 90 days before the bid application.
- d. Each Core Employee desiring to continue to receive their benefits under their Employer's existing program, in lieu of benefits which may be earned under the appropriate Union Trust Funds, must also request a waiver of contributions in writing.
- e. The Employer shall remit the required hourly contributions to the appropriate Union Trust Funds on behalf of all their craft employees on the Project, except Core Employees that have requested a waiver of contributions in writing.
- f. The Employer shall submit to the Project Contractor monthly copies of all remittance forms confirming compliance with all Trust or benefits program requirements.

**8.6** The Parties recognize the Owner's commitment to provide opportunities on the Project for DBE contractors which may not have previously had a relationship with the Unions signatory to this Agreement. Accordingly, there shall be no requirement for certified DBEs to pay union



health benefits where such firms otherwise provide their employees with comparable health benefits.

In such circumstances, a firm will be required to provide quarterly documentation of the provision of such comparable health benefits or paid fringe amounts to the Committee. In addition, each employee for whom such waiver is requested must also file a written request for a waiver of contributions with the Committee.

There shall be no requirement for non-signatory DBEs to contribute to other union trust funds.

**8.7** Proof of payment and weekly certified payroll reports of affected employees shall be mailed to reach the office of the appropriate local collection agent not later than the fifth of the month for the work in the previous calendar month. These documents must be submitted to the Project Contractor and subsequently to the Owner along with end of the month pay request in accordance with the Contract Documents. Employers who fail to remit as provided above shall be additionally subject to having this Agreement terminated upon 72 hours' notice, in writing, being served by the Committee, provided the Employer fails to show satisfactory proof that the required payments have been made.

**8.8** The failure of an Employer to comply with the provisions of this section shall constitute a breach of this Agreement. As a remedy for such violation, the Committee is empowered to require an Employer to pay into the appropriate Trust Fund any delinquent contributions to such funds which have resulted from the violation.

**8.9** If, as a result of violations, it is necessary for the Trustees of the funds to institute court action to enforce an award, or to defend an action which seeks to vacate such award, the losing party shall pay any accountants' and/or attorneys' fees incurred by the Trustees, plus costs of the litigation which have resulted from the bringing of such court action.

## **ARTICLE IX**

### **Labor-Management-Community Oversight Committee**

**9.1 Labor-Management-Community Oversight Committee Purpose and Objectives** – In recognition of the necessity for cooperation and communication between all parties to the Agreement in achieving the diversity goals of this Agreement, the prevention of disputes and misunderstandings and the implementation of this Agreement, the Parties agree to establish a Labor-Management-Community Oversight Committee ("Committee") and to hold periodic meetings to discuss and resolve issues and/or concerns which may arise during the life of the Agreement. The dates and times of these meetings will be determined by the parties but in no case shall they meet less than monthly.

**9.2. Membership** – The Committee shall be comprised of an equal number of Owner representatives, Project Contractor representatives, Union representatives, Employer representatives and Community representatives from community based organizations with a strong record of accomplishment of serving racial and ethnic minorities, women and low-income

people. The Parties and Community shall each have an equal number of members; a minimum number of two and a maximum number of four members and four votes for each group; even if only one member is present. A quorum for this committee is when all parties are represented. No official business can be transacted without a quorum.

**9.3 Compliance Monitoring** – There shall be a Compliance Monitoring Subcommittee (“Subcommittee”) of the Committee that is responsible for monitoring Employer’s compliance with the contracting, apprenticeship, workforce, and local hire goals and programs established in this Agreement. The Subcommittee shall include at least one representative of: the Owner; the Building Trades; Project Contractor; Pre-Apprenticeship programs; Disadvantaged Business Enterprise (“DBE”) contractors; and of Community-Based Organizations (“CBOs”) with a strong track record of serving racial and ethnic minorities, women and low-income people. There shall be a dedicated fund account in the one-time amount paid by Owner of 0.25% of total construction services contract cost (the GMP) minus the CM/GC fee to finance the operations of the Compliance Monitoring Subcommittee, including CBO participation. The Committee shall be the sole administrator of this fund, and it shall have the authority to establish its own rules and procedures for administering this fund, consistent with the terms of this Agreement.

**9.4 Arbitrator** – The Committee shall have the authority to appoint and remove a Standing Arbitrator and an alternate (hereinafter identified collectively and individually as the “Arbitrator”) to decide any disputes arising under Articles X, XI, XII, XIII, XIV, and XVI of this Agreement. The Committee shall have the authority to establish its own rules and procedures and shall be the governing authority to interpret this Agreement and to resolve any disputes arising under Articles X, XI, XII, XIII, XIV, and XVI of this Agreement. It shall have oversight authority to review the decisions of the Arbitrator in order to clarify such for the future guidance of the industry but not to overrule a particular decision of the Arbitrator. The Committee may respond to specific requests for interpretations from interested parties in the industry.

**9.5 Dispute Resolution** – For all misunderstandings, disputes, or grievances arising out of this Agreement other than those arising under Articles IV, X, XI, XII, XIII, XIV, and XVI of this Agreement, the Committee shall follow the Dispute Resolution Procedures set forth in Article V, Sections 5.2 and 5.3. Nothing in this Agreement precludes the Owner from taking actions authorized or permitted by the construction services contract executed between the Owner and the Project Contractor.

**9.6 Program Administration** – The Committee shall also administer the Community Construction Training, Outreach & Recruitment Fund (Section 10.5), the Technical Assistance Fund (Section 13.2), and the Compliance Monitoring Fund (Section 9.3). The Committee shall have the authority to establish its own rules and procedures for administering those funds, consistent with the terms of this Agreement.

## **ARTICLE X**

### **Community Apprenticeship Goals**

**10.1 Apprenticeship Hours** – In recognition of the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction

industry all Employers winning prime contracts of \$200,000 or more and subcontracts of \$100,000 or more shall employ state registered apprentices with an aggregate Project goal of twenty percent (20%) of all covered work hours to be worked by BOLI registered apprentices or federally registered apprentices

Employers shall pay apprentices at the rate required by the applicable collective bargaining agreement or in accordance with the state or federal prevailing wage rate applicable to the project. The apprentices must be enrolled in state-approved apprenticeship programs during all of the hours worked on the project by the apprentices.

Employers shall not utilize workers previously employed at a journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of this provision.

Recognized Pre-Apprenticeship Programs and Community-Based Organizations which have been approved by the Committee and the labor union for which entry is sought, shall be used as a "first source" for entry into apprenticeship programs for hiring to meet the Apprenticeship Hour Goals required under this Section. To be approved as a first source entry, the program must have a proven track record of serving women or people of color.

**10.2 Alternative Methods to Fulfill Requirement** – If the Employer is unable to fulfill its 20% requirement, then the Employer may also use methods (a) or (b) below.

- a. Including 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 can be counted, but only if the apprentice is rehired by the same employer after completion of related training; or
- b. Including 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.

**10.3 Apprenticeship Diversity** – The parties agree 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. To that end, the Parties agree to set target goals for the recruitment and retention of apprentices from historically disadvantaged or underrepresented communities, including racial and ethnic minorities, women, and low-income people. To that end, the Parties agree to goals for the recruitment and retention of apprentices from these communities. The goal for minority apprentices shall be eighteen percent (18%) of apprenticeship project hours, and a separate goal for women apprentices shall be nine percent (9%) of apprenticeship project hours.

Employers shall maintain records of the diversity of their on-site workforce, such as certified payroll or other required reporting forms, sufficient to allow the Owner to determine whether a Project is meeting this goal and to assess the rates of apprenticeship hiring of racial and ethnic

minorities and women. Employers shall submit this information to the Owner and the Committee on a monthly basis.

Employers shall maintain documentation of their good-faith efforts to meet the apprenticeship project hour goals for the duration of the project and shall submit such documentation to the Owner and the Committee monthly.

**10.4 Outreach, Training and Retention Strategies** – The Committee shall develop a plan in conjunction with existing community groups to recruit and employ historically disadvantaged or underrepresented people, including racial and ethnic minorities, women, and low-income people, into a pool of pre-qualified applicants that may be made available for immediate employment on Projects as allowable under a crafts apprenticeship standards.

The Union agrees to engage in active recruitment of historically disadvantaged or underrepresented members, including racial and ethnic minorities, women, and low-income people and to refer to the Employer in sufficient numbers of such members to assist in meeting required employment goals.

The Committee shall also develop specific strategies to ensure that apprentices recruited under this policy shall be fully trained and prepared to enter into the workforce as journey level skill workers in their respective trades. These strategies shall include mentoring minority and women apprentices, removing barriers to entry into the apprenticeship programs where such barriers are not a bona fide occupational requirement, and providing financial assistance in purchasing the tools and supplies necessary to successfully complete an apprenticeship in the trades.

Employers shall maintain documentation of their good-faith compliance with the strategies developed by the Committee and shall submit such documentation to the Owner and the Committee monthly.

**10.5 Community Construction Training, Outreach and Recruitment Fund** – The Parties agree to establish a Project Specific Community Construction Training Fund that will provide construction training opportunities for community residents by the award of grants to qualified BOLI-approved Pre-Apprenticeship programs and qualified community based organizations with a strong record of serving historically disadvantaged or underrepresented people, including people of color, women, and low-income people. The awarding of grants shall take place through a transparent application process.

The Owner hereby agrees to submit to a project specific dedicated fund account the one-time amount of 0.50% of total construction services contract cost (the GMP) minus the CM/GC fee. The fund shall be used to promote the recruitment, training, and hiring of a qualified, diverse workforce. The parties agree that WSI/CAWS will be the recipient of these funds and will convene a subcommittee of the Committee to advise on the utilization and distribution of these funds in accordance with these objectives.

**ARTICLE XI**  
**Community Workforce Goals**

**11.1 Workforce Diversity** – The Parties agree to facilitate the recruitment, retention and promotion of historically disadvantaged or underrepresented people, including racial and ethnic minorities, women, and low-income people, at the journey-level who are interested in careers in the construction industry. To that end, the Parties agree to set target goals for the recruitment and retention of journey-level workers from historically disadvantaged or underrepresented communities, including racial and ethnic minorities, women, and low-income people. To that end, the Parties agree to goals for the recruitment and retention of journey-level workers from these communities. The goal for minority workers shall be eighteen percent (18%) of total project hours, and a separate goal for women workers shall be nine percent (9%) of total project hours. These workforce diversity goals apply to the workforce of all Employers on the project, including the Core Employees and workforce of certified small disadvantaged, women owned, and minority businesses who do not have a collective bargaining relationship with the Unions and who become successful bidders on the project as allowed by Section 7.5 above.

Employers shall maintain records of the diversity of their on-site workforce, such as certified payroll or other required reporting forms, sufficient to allow the Owner to determine whether a Project is meeting this goal and to assess the rates of journey-level hiring of racial and ethnic minorities, women, and low-income people. Employers shall submit this information to the Owner and the Committee on a monthly basis.

Employers shall maintain documentation of their success in maintaining such journey-level target percentages for the duration of the project and shall submit such documentation to the Owner and the Committee monthly. If an Employer is unable to meet this objective, the Employer shall document its good-faith efforts according to 11.2, and shall develop additional strategies and make additional efforts as outlined in 11.3 to be reported to the Committee.

**11.2 Recruitment and Retention Strategies** – Employers and Unions shall make their best efforts to recruit and retain historically disadvantaged or underrepresented people, including racial and ethnic minorities, women, and low-income people by providing a detailed Recruitment and Retention Strategy which describes its history and its project-specific plans to:

a. Work aggressively to recruit racial and ethnic minorities, women and low income people and to refer racial and ethnic minorities and women to Employers. Prior to the start of construction, the Project Contractor and each Employer then selected shall meet with the construction trade unions, the Committee, and the awarding or contracting authority for the purpose of reviewing this Agreement and the projection of the workforce needs over the course of construction.

b. Assist the Committee in annually conducting workshops with minority and women employees to enlist their assistance as recruiters and request their ideas on how to increase employment of underutilized groups.

c. Provide all apprentices referred to the Employer a fair chance to perform successfully, allowing for possible lack of previous experience. Recognize that the Employer is responsible for providing on-the-job training, and that all apprentices should not be expected to have previous experience.

d. Participate in job fairs, school-to-work, and community events to recruit minorities, women, and disadvantaged individuals into the construction trades. Owner and Project Contractor will participate at least semi-annually for the duration of the project.

e. Allow scheduled job site visits by participants in community programs, as safety allows, to increase awareness of job and training opportunities in the construction trades.

f. Employers will keep applications from qualified women and minorities for the duration of the project, and contact them when an opening occurs. Keep applications of those who were qualified and not selected for an opening, and contact those persons when an opening occurs. This will not circumvent the appropriate union referral process.

g. Employers will maintain a harassment-free work place by conducting a pre-ground breaking review using the Wider Opportunities for Women harassment-free workplace check list, and repeating annually.

h. Employers will ensure that employees are knowledgeable about the Employer's policies if they need to report a harassment problem. Employers will provide a complete orientation to the job site to all workers, including procedures for reporting problems, and expected crew behaviors.

i. Employers will make reasonable attempts to keep apprentices working and train them in all work processes described in the apprenticeship standards. The Committee will review training plans, apprentice work progress reports and hiring/worker retention.

j. Employers will review and disseminate, at least annually, the Employer'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.

k. Regularly provide cultural competency 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 Employer's EEO policies, affirmative action obligations, and cultural competencies.

l. Employers will 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.

m. Employers will provide adequate toilet facilities for women on the job site, by maintaining a clean, accessible and locked toilet for female crew members, and by removing graffiti immediately to help create a respectful environment.

n. Employers will match minority, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a late-term or journey-level mentor.

Employers and Unions shall maintain documentation of their good-faith compliance with the retention strategies set forth above and shall submit such documentation to the Owner and the Committee monthly.

**11.3 Failure to Meet Goals** – Whenever there is a documented failure to meet goals, the involved Employer must develop additional specific outreach strategies and report its plan for achieving compliance to the Committee to improve future performance.

## **ARTICLE XII** **Local Workforce Goals**

**12.1 HUBZone Hiring** – Subject to all US Department of Labor and Oregon State Standards, Employers shall hire not less than 30% of their workforce from areas designated by the Federal Small Business Administration as Historically Underutilized Business Zone (“HUBZone”) within the Portland Metropolitan Area. Employers shall maintain documentation of their good-faith compliance with maintaining such local HUBZone workforce numbers for the duration of the project and shall submit such documentation quarterly to the Owner and the Committee. If an Employer is unable to meet this objective, the Employer shall document its good-faith efforts to comply with the objective and shall also document the lack of available local workforce numbers sufficient to achieve this objective. Such demonstrated lack of available local HUBZone workforce and good faith efforts to comply shall excuse a failure to satisfy this requirement.

The Committee has the authority of make exceptions to these HubZone requirements with a unanimous vote of the members.

## **ARTICLE XIII** **Community Contracting Goals**

**13.1 Subcontractor Goals** – There shall be a utilization goal for firms that have been certified by the State of Oregon as a Minority-Owned Business, a Women-Owned Business or a Disadvantaged Business Enterprise (M/W/DBE). The utilization goal is twenty percent (20%) of the Hard Construction costs for the project. “Hard Construction Costs” is the cost to build improvements on a property, including all related construction labor and materials, including fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as overhead, administration or taxes, or other professional services shall not be considered as part of the Hard Construction Costs.

Project Contractor shall develop a plan to achieve the 20% goal, which shall be submitted to and approved by the Committee. Project Contractor shall undertake and maintain documentation of good-faith efforts to achieve these goals for the duration of the project and shall submit such documentation to the Owner monthly and the Committee quarterly.

**13.2 Technical Assistance Fund** – The Owner hereby agrees to submit to a project specific dedicated fund account in the one-time amount of 0.25% of total construction services contract cost (the GMP) minus the CM/GC fee. This fund shall be used to assist M/W/DBEs to secure bonding and obtain the technical assistance and business support necessary to successfully complete a contract. The Committee shall have the sole responsibility and discretion to establish guidelines for the provision of such technical assistance, and shall provide such grants to community based organizations with a strong record of serving M/W/DBEs. The awarding of grants shall take place through a transparent application process to be determined by the Committee.

**13.3 Mentoring** – The Parties recognize that one of the barriers to entry for many M/W/DBEs is a lack of proven success on commercial construction projects of the type generally contracted for by Owner. The Parties therefore agree that, in conjunction with the Committee, the Owner and Project Contractor shall identify subcontracting opportunities that will provide opportunities for M/W/DBEs to successfully bid, and which would build the capacity of these firms to bid for larger contracts on future Owner projects. These subcontracts will be known as “Opportunity Contracts.” Alternative procurement (best value) methods are encouraged to maximize participation in the Opportunity Contracts process.

As a component of these Opportunity Contracts, Project Contractor and non-DBE Employers in conjunction with the Owner and Committee, shall agree to assist qualified potential M/W/DBE bidders in the bidding and estimating process. Once such Opportunity Contracts are secured, the Parties shall also assist the successful M/W/DBE bidder by providing technical assistance as necessary to ensure the successful completion of the Opportunity Contract. The Committee shall be responsible for coordinating these mentoring activities at the pre- and post-bid stages.

Successful M/W/DBE bidders on these “Opportunity Contracts” shall agree to mentoring assistance. The Project Contractor and Owner, shall have the responsibility and discretion for establishing criteria for the inclusion of M/W/DBE firms in the pool of potential candidates for Opportunity Contracts, and shall conduct the evaluation process in a transparent application process open to all firms seeking to bid on the Project.

**13.4 Segmentation** – In order to allow smaller qualified contractors to successfully bid on subcontracts, the Owner shall require Employers holding subcontracts in excess of \$250,000 to provide targeted work scopes where feasible as determined by the Owner in consultation with the Committee. For purposes of this Section, targeted work scopes may be broken into discrete subcontracts where feasible as determined by the Owner in consultation with the Committee.

**13.5 Price Efficiency** – In situations where the Employer provides materials, the Employer shall negotiate with Suppliers to purchase supplies and materials on a project-by-project basis



and shall require Suppliers to make available to all bidders those materials and supplies at the same cost.

**13.6 Implementation** – The Committee, in conjunction with the Owner and Project Contractor, shall develop policies and procedures to implement the Program, including determining whether an Employer has made good faith efforts to meet the goal; whether the certified firm is performing a commercially useful function; substitutions, additions or deletions of certified firms during contract performance; payments to certified firms; worksite disputes between Employers and certified firms; and any other necessary provisions.

**13.7 Documentation** – Employers shall maintain documentation as determined by the Committee of their compliance with these requirements and shall submit such documentation monthly to the Project Contractor, and the Project Contractor in turn shall submit to the Owner and to the Committee.

**13.8 Exclusive Representation and Authority** – The Parties recognize the importance of retaining Core Employees to the continuity of operations in DBE firms. Accordingly, there will be no limit on the use of Core Employees for certified DBEs. Additionally, there shall be no requirement for certified DBE Employers to pay union health benefits where such firms otherwise provide their employees with comparable health benefits or add the fringe amount of these health benefits to employee wages.

In such circumstances, a firm will be required to provide quarterly documentation of the provision of such comparable health benefits or paid fringe amounts to the Committee. In addition, each employee for whom such waiver is requested must also file a written request for a waiver of contributions with the Committee.

There shall be no requirement for non-signatory DBEs to contribute to other union trust funds.

## **ARTICLE XIV**

### **Helmets to Hardhats**

**14.1.** The Employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

**14.2.** The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

**ARTICLE XV**  
**Reporting Requirements**

Employers shall cooperate with the Owner with respect to its reporting requirements for financial and programmatic data resulting from the expenditure of Owner funds. During the life of the Project, Employers will document information regarding the implementation of this Agreement and will provide reporting to the Owner on a monthly basis and as requested. Documentation includes but is not limited to:

- a. The creation of M/W/DBE solicitation packages
- b. M/W/DBE results
- c. Inquiries of M/W/DBE interests in bidding, bid amounts, and contract awards
- d. Subcontractor & Supplier payments
- e. Subcontractor replacement requests/decisions
- f. Technical assistance requested/provided and/or referred
- g. Apprenticeship results
- h. Problems and successes experienced (mentorship)
- i. Capacity building results
- j. Monthly Electronic Spreadsheet of MW/DBE Awards/Material & Major Expenditures and Supplier Purchases
- k. Charts and Graphs as requested

## **ARTICLE XVI**

### **Compliance**

**16.1 Breach** – 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 Agreement negates such funding and 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, the parties mutually agree that failure to meet the requirements of this Agreement, including but not limited to the submission of required documentation, constitutes a material breach of the contract.

**16.2 Remedies for Breach** – In the event of a breach of this Agreement on a particular Project 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 Parties have remedied the breach of contract. In the event that progress payments are withheld, the Project Contractor and Employer shall not be entitled to interest on said payments.

If an Employer(s) is responsible for noncompliance with the Workforce Program requirements (Articles X, XI, XII), the Owner may choose to withhold only their portion of the progress payment.

b. **Liquidated Damages** The Parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for an Employer’s failure to comply with the Good Faith Efforts requirements. The parties further agree that it is difficult, if not impossible, to determine the cost to the Owner when, due to a lack of Good Faith Efforts, workforce or subcontracting opportunities are not provided.

Therefore, if an Employer fails to make the Good Faith Efforts required by Articles X, XI, XII, XIII, or XIV of this Agreement, the Project Contractor or Employer agrees to pay liquidated damages of \$500 per day for each day of noncompliance or until the breach of contract is remedied.

These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by Project Contractor’s or an Employer’s failure to comply with other provisions of the Project Contract. Such liquidated damages shall be the Owner’s sole and exclusive remedy for failure to comply with the Good Faith Efforts Requirements.

c. **Notification of Possible Debarment** By executing this Agreement, the Project Contractor and Employers agree that they have been notified that failure to comply with this Agreement may lead to the Project Contractor’s and Employer’s disqualification from bidding on and receiving other Owner contracts.

d. **Other Remedies** The remedies that are noted above do not limit any other remedies available to the Owner in the event that the Project Contractor fails to meet the requirements of this Agreement.

## **ARTICLE XVII**

### **Severability**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of the State of Oregon or the United States, that provision or those provisions shall be deemed to be null and void and shall be deemed severed from the Agreement, and the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby.