

EVALUATION OF COMMUNITY BENEFITS AGREEMENTIF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ Maggie Tallmadge	97211	m
Hays Witt		
✓ Bev Logan		bev.logan@gmail.com
✓ Nkenge Nkenge Harman-Johnson Urban League POX	97211	
✓ Irais Gandanilla	97212	spellname@yahoo.com
✓ Isis Harris		
Molina Wisner		
✓ Michael A. Buizett		
✓ NATE STOKES	OPERATING ENGINEERS Local 707	
Vicqui Guevera		vicqui@valleygrowers.com
Ron Hebrant	2104 NE 33rd St Gresham	ronajimmy@gmail.com

Charles Potter
Date 09-22-16

EVALUATION OF COMMUNITY BENEFITS AGREEMENTIF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ Willy Myers	3535 SE 86 th AVE	willy@cphctc.com
✓ DAVE TISCHER	17230 NE SACRAMENTO ST	DAVE@LOCALB7.ORG
RON LEE	2954 STELLAR CT GRANTS PASS, OR 97527	
✓ Maurice Rahming		MAURICE@ONEHLE.com
Jon Jensen		jon@ibw42.com
Mike Titus	12812 NE MAX Street Portland OR	MTitus@BACNorthwest.org
9/28 ✓ Matt Malinsheimer		mmalinsheimer@hk-law.com
Robert Crane	46219 SE 1 st Sandy	HooplCrane@gmail.com
Matt Maris	14941 SE Covington RD	mmaris@lunarroc.org
✓ JAMES L POSEY	Citizen	POSEY@PRACAT.NET
Amy James Neel	3934 NE MLK Blvd	amy@tradeswomen.net

EVALUATION OF COMMUNITY BENEFITS AGREEMENTIF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
9/28 ✓ Jodi Guerrero Parker	6004 NW 2nd Ave 98665	jbparker@gmail.com
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Ginni McElroy	Beaverton OR 97007	
Ramona McCarter	97218	
Peter Chimuku	97203	
Mayak Bilkuai	97217	Mayakbilkuai2000@yahoo.com
Anthony Wark	97264	
Jasmine Lesniak	97212	
Darrell Darrell Smith	97220	
Dontrelle Williams	528 E	
9/28 ✓ Crystal Magana	225 NW Couch St # 341	crystalmagana@gmail
Date 09-22-16 Jany Lewis Dante Miller	St. Johns 97230	Page 3 of 5 Printer number 1@yahoo.com

9/28 ✓ Name
Grant Page

Address
17675 SW Farmington Rd

Email
Grant@LikePPE.com

Continued

Agenda Item 1061

TESTIMONY

2:00 PM TIME CERTAIN

EVALUATION OF COMMUNITY BENEFITS AGREEMENT

IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)

ADDRESS AND ZIP CODE

Email

	CAMILO MARQUEZ	5010 NE 73 rd Ave	Camilo E O'Neill electronics.com
9/28 ✓	Julie Garver	Innovative Housing, Inc 219 NW 2 nd AVE Portland	jgarver@innovativehousinginc.com
9/28 ✓	Chloe Eudaly (YOU DAILY)	6023 NE 15 th AVE, PORTLAND, OR 97211	chloe@chloeforportland.com
	Kaki Marshall	2137 N. Summer St Portland OR 97217	Kaki@PDX.EDU
	Andre Nkenge Harmon Johnson	Urban League PDX pg. 1	
9/28 ✓	Rankis Giannettino Villabro	3527 NE 63 rd Ave Portland, OR 97213	rankis.villabro@gmail.com
9/28 ✓	Nathaniel C. Hartley	3820 N Juneau ST Portland OR 97217	hartleycreationsinc@hotmail.com

INTERSTATE MAINTENANCE FACILITY RENOVATION AND KELLY BUTTE RESERVOIR PROJECT

ACCEPT CONTRACTS AS COMPLETE

IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)

ADDRESS AND ZIP CODE

Email

✓ Ron Robbins		
X NATE STOKES		
X Donnette Williams	588 SE	
X Sonje Hendrix	97211	
X Ramona McCarter		
Crystal MAGANA	225 N.W. Couch St unit 341 Portland, OR	crystalmagana@gmail
✓ Kennedy Morgan		Kmorgan@hwi-corp.com

Moore-Love, Karla

From: Kennedy Morgan <kmorgan@nwi-corp.com>
Sent: Thursday, September 29, 2016 10:42 AM
To: Council Clerk – Testimony
Subject: Hearing 9/28/2016 - CBA Support Testimony
Attachments: 092816-K Morgan-CC Testimony RE CBA.pdf

Kennedy Morgan
P 503-235-6392
F 503-760-7577
W nwi-corp.com

Northwest Infrastructure, LLC
2323 SE Clatsop Street, Portland, OR 97202

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City Council Testimony
Kennedy Morgan
September 28, 2016

Good afternoon. My name is Kennedy Morgan and I'm with Northwest Infrastructure. We perform earthwork and utilities along with demolition. Having the advantage of listened to testimonies last week, I've spent the time since then mulling over what I heard. It's interesting for a small-town girl who had little exposure culturally growing up. I never knew how much discrimination still exists in our society. I never thought I would see it first hand and realize how impactful it can be.

During my four plus years with Northwest and working closely with our owner, Michael Martin, I've come to realize some significant things. First, the construction industry is cutthroat. We've had jobs that should have been ours. We were low bidder and thoroughly qualified – and had generals rip the job out from under us. They've given it to others who "needed the work more" or found ways to get last minute bids from others they'd rather work with. We have been told we weren't selected because they didn't feel we could meet their demanding schedule – AND YET – we were never asked about the schedule, never had a discussion about whether we could meet it or what our manpower looked like.

Doing DOT work we have seen firsthand, as well, how marginalized minority companies are. Until recently DOT required ethnic-specific participation on many projects. Do you know how the majority of that participation was achieved? With flagging. With trucking. And with oil purchase. Periphery positions. Lower profit margin roles. Only once were we ever contacted about doing other work – digging or installing utilities – the areas of our business that have a higher profit margin. How does this system grow business? How do these companies gain capacity? The answer is simple – they don't. An unregulated, unchecked, faulty system where big general contractors are allowed to keep big money in house, subcontract to their favorites – and marginalize businesses like ours is destined to fail us.

NWI had a chance to be a part of both pilot projects with the CBA. At Kelly Butte, we were a sub-tier to the general to provide all of the trucking for the duration of the project. More than half the overall trucking hours were performed by our trucks; the remainder went to a total of more than 50 small and larger trucking companies we subcontracted to. I won't say that the project was without pitfalls. We struggled against our customer calling out trucks on their own and not running them through us. The effect was that our contract value – and participation – would be reduced – and they benefited by paying very low rates. However, the oversight committee was invaluable. We called upon them more than once. The oversight

committee was our voice to keep everyone in line and attempt to avoid further shenanigans. All in all, the experience was a good one. We learned a lot and the \$1.5 million in trucking contributed greatly to the growth of the company over two years.

We also participated in the water bureau CBA pilot project. Northwest submitted a bid on the earthwork package. Within the earthwork scope they required five years' experience in handling contaminated materials. We knew we didn't have the requisite experience but had connected with an environmental company who was willing to lend their expertise as a consultant to ensure our employees gained the experience doing the work with the requested supervision. Unfortunately, despite our having been the only minority-owned bidder for the work, we were not awarded.

However, due to the CBA's involvement in the project, we did participate. An agreement was drafted whereby one of our foreman was able to work directly with the awarded contractor to gain the experience handling contaminated materials. The work was performed on a T&M basis for a total of \$74,000. Without the CBA we wouldn't have even had that opportunity on this project.

With the support of the CBA Northwest has also transitioned to an industry specific project management and bookkeeping system. Doing so helps us to operate more

like the large companies, provide reporting and detail that our bonding company and banks like to see. The CBA provided funding for us to begin our training to set the system up.

What we have learned as a result of the CBA experience is that having an oversight committee is paramount. Having an advocate, a board, a group of people who keeps generals – and owners – in check is the only way to insure compliance. It's also the only way to have a voice to insure significant and viable participation occurs that enables a company's capacity to benefit.

What I'd like to offer from a personal perspective is this. As a country we clearly have not come far enough from the war our ancestors fought. Statistics cannot be argued with. White, male-owed, male-run businesses are flourishing. Fortis. Hoffman. Konell. Coffman. Kiewit. Stacy & Witbeck. Bremik. Walsh. How many multi-million dollar projects are run by marginalized, minority and women-owned businesses? Can you walk around the city and find high-rises built by companies owned by people that look like much of the audience in this room? And ask yourself this. Do you believe the reason you don't is because they aren't capable? Aren't competent? Lack capacity? If your heart of hearts says yes, then you are the problem. If you question why, just look at the statistics. Listen to what people here are saying. Look at what they are capable of. And look at how the CBA has tried to

bring a different approach to growing minority and women owned businesses. See their success and learn from it. We need to keep this momentum going. We can't go back to business as usual where we have good intentions but, "Hey, if it doesn't happen, we tried." That isn't good enough. What's good enough is seeing more dollars go into diverse hands. Empowering companies and employees like you see in this room today. Let's make Portland a trendsetter. Allow the CBA to help show inclusion in Portland. Fast forward in your minds five years from now. What if we could say 25% of construction dollars in this great city went into the growth of women and minority owned – DIVERSE – construction businesses? Wouldn't that set the world on its heel?

I know there have been some impassioned speeches, some emotional moments, and some tense ones, too. I want to thank you for your time today and just implore you to continue with a program like the CBA as it's really an opportunity to write a new future for this industry – and perhaps others – in Portland. Thank you.

A handwritten signature in black ink, appearing to read "Angie", with a stylized, flowing script.

Copy post-hearing to cctestimony@portlandoregon.gov

Moore-Love, Karla

From: Alan Ferschweiler <aferschweiler@iaff43.org>
Sent: Wednesday, September 28, 2016 12:16 PM
To: Council Clerk – Testimony
Subject: Agenda Item #1088
Attachments: CBA PFFA response.docx

Please accept my written testimony on agenda item #1088.

Alan Ferschweiler
President
Portland Firefighters' Association, IAFF Local 43
Office 503-774-4302
Cell 971-212-5066
aferschweiler@iaff43.org

September 28, 2016

To: Portland City Council, Mayor's Office

1221 SW 4th Ave

Portland, OR 97204

CC: Procurement Staff, Water Bureau Staff

From: **Alan Ferschweiler, President**

Portland Fire Fighters' Assn.

Dear City Commissioners and Mayor:

Portland Fire Fighters' Association Local 43 represents nearly 700 men and women serving the City of Portland as fire fighters, paramedics, fire prevention inspectors, fire investigators and as support personnel. Another 32 fire fighters and paramedics are employed by the Port of Portland and staff the airport fire station. The Association is dedicated to: gaining better safety laws for the citizens of Portland, lobbying for better fire prevention and protection, and informing the citizens of the problems facing fire fighters.

We are part of a broad coalition of community partners who are working together to address the complex issues that have resulted in disparate impacts for communities of color, those with low-incomes, renters, workers, and minority- and women-owned small businesses. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development. We are very concerned with the way in which the City of Portland has handled the Community Benefits Agreement (CBA) pilot results and the intended next steps.

We are writing today to encourage you to *vote against* accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic and a) does not accurately describe the success and lessons learned from the CBA pilots and b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

There are numerous issues with the document and proposed next steps, including:

- Excluding any PLA language
- Capping any community investment to 1% of project costs
- Naming the "Community Equity and Inclusion Plan (CEIP)" as the go-forward template, to be used by all Bureaus going forward. This template is currently in early draft form and has had zero community input, instead has been written by internal City staff and legal. It is planned to go before City Council in December 2016

- Explicitly calling out not using CBAs
- Stating that the City will only apply the “CEIP” to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any Oversight committee to an advisory role going forward

It has been our experience that the best outcomes result when every voice is heard at the table and through articulate communication amongst those involved. In a fire it is between careful teamwork that the flames are extinguished and a common goal is reached. We respectfully ask that all the parties work in partnership to get to the desired goal for all.

Instead, we request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City’s existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

- **High road construction career pathways** that pull people out of poverty
- **A collaborative and transparent process** between the community and the City
- **Clear and explicit goal setting and data monitoring**
- **Clear engagement and commitment secured by all relevant parties**, specifically including training providers, community partners, contractors, and labor unions
- **Built-in mechanisms to support the necessary community capacity building**, not capped at 1% of project costs
- **Ongoing meaningful oversight and accountability**

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,

Moore-Love, Karla

From: LA Edwards <lakesr49@msn.com>
Sent: Wednesday, September 28, 2016 12:08 PM
To: Council Clerk – Testimony
Subject: Agenda item #1088 written testimony
Attachments: CBA_Written_testimony (LA Edwards).docx

I am submitting this written testimony for the record. Please enter this statement into the record as part of the testimony today regarding this matter at City Council's scheduled 2:30 pm meeting.

September 28, 2016

To: Portland City Council, Mayor's Office

1221 SW 4th Ave

Portland, OR 97204

CC: Procurement Staff, Water Bureau Staff

From: Keith Edwards, Board member Constructing Hope

Dear City Commissioners and Mayor:

Our Mission

Constructing Hope means that we are in the business of rebuilding the lives of people in our community by encouraging self-sufficiency through skills training and education in the construction industry.

We Value

- Partnerships with citizens, public officials, community-based organizations, service providers and other allies.
- Involvement of low-income citizens and communities.
- Continual evaluation and improvement of programs and initiatives.
- High standards of accountability to participants, employers, the community and other stakeholders.

Our Role

- We achieve our mission by providing opportunities for self-sufficiency through a pre-apprenticeship, skills, and educational training program for people with a legal history and low income people.
- We facilitate permanent job placement for program graduates.
- We produce qualified workers with real world experience for the construction industry.

- We serve our community by engaging in community development projects.

We are part of a broad coalition of community partners who are working together to address the complex issues that have resulted in disparate impacts for communities of color, those with low-incomes, renters, workers, and minority- and women-owned small businesses. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development. We are very concerned with the way in which the City of Portland has handled the Community Benefits Agreement (CBA) pilot results and the intended next steps.

We are writing today to encourage you to *vote against* accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic and

- a) does not accurately describe the success and lessons learned from the CBA pilots and
- b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

There are numerous issues with the document and proposed next steps, including:

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- Capping any community investment to 1% of project costs
- Naming the "Community Equity and Inclusion Plan (CEIP)" as the go-forward template, to be used by all Bureaus going forward. This template is currently in early draft form and has had zero community input, it instead has been written by internal City staff and legal. It is planned to go before City Council in 2016
- Explicitly calling out not using CBAs
- Stating that the City will only apply the "CEIP" to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any Oversight committee to an advisory role going forward

It only seems right and correct to involve the constituents you serve in this process. We understand that the City Council is elected to serve the City of Portland and make decisions. However, the decisions made by the council today will have an impact that will determine outcomes for the future for employers and employees alike, along with their families. Certainly the decisions made can be undone or changed but let us not go on that premise. Let us go on the premise of getting it right in a collaborative way the first time.

Instead, we request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City's existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

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- **Ongoing meaningful oversight and accountability**

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool. **Let's work together.**

Sincerely,

Keith Edwards

Moore-Love, Karla

From: Tony Lamb <tony@rosewoodinitiative.org>
Sent: Wednesday, September 28, 2016 12:03 PM
To: Council Clerk – Testimony
Subject: Agenda Item #1088 Written Testimony
Attachments: RosewoodCBA_Written_testimony.docx.pdf

Please see attached letter.

Best Regards,

Tony Lamb
Director of Economic Development
The Rosewood Initiative
Building Our Community Together

September 28th, 2016

To: Portland City Council, Mayor's Office
1221 SW 4th Ave
Portland, OR 97204

CC: Procurement Staff, Water Bureau Staff

From: The Rosewood Initiative,

Dear City Commissioners and Mayor:

The Rosewood Initiative works to connect and empower Rosewood neighbors to build a safe, prosperous, vibrant and inclusive community. As such, The Rosewood Initiative is one of six Neighborhood Prosperity Initiatives (NPIs) in the City of Portland, and as such works to improve the economic conditions along Stark St. from 139th to 162nd Ave.

We are part of a broad coalition of community partners who are working together to address the complex issues that have resulted in disparate impacts for communities of color, those with low-incomes, renters, workers, and minority- and women-owned small businesses. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development. We are very concerned with the way in which the City of Portland has handled the Community Benefits Agreement (CBA) pilot results and the intended next steps.

We are writing today to encourage you to *vote against* accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic and a) does not accurately describe the success and lessons learned from the CBA pilots and b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

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- Explicitly calling out not using CBAs

- Stating that the City will only apply the “CEIP” to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any Oversight committee to an advisory role going forward

Rosewood has identified Community Benefit Agreements (CBAs) as a tool to assist local business, especially businesses owned by women and People of Color, two groups that have traditionally faced significant barriers in accessing the bidding process for city contracts. For the reasons stated below, Rosewood urges the City Council to implement the use of CBAs across all city financed construction projects.

The primary beneficiaries of these agreements will be women and minority owned businesses.

- Benefiting businesses are locally owned which ensures that at least 60% of the revenue will remain in the local economy, which will further enhance our local businesses.
- Use of CBAs will become a tool to remedy the historical barriers faced by women and minority owned business in the construction field.
- CBAs will assist women and People of Color to enter into and find work on a regular basis in the construction field. Rosewood notes that both groups have historically faced barriers to training and employment in the trades.
- East Portland Action Plan (EPAP) has identified CBAs as an anti-displacement strategy in that construction jobs are living wage jobs. Increasing access for women and People of Color to living wage jobs will allow these groups to remain in their communities as costs of housing sky-rocket in Portland. Rosewood also notes that East Portland has a significant portion of the city’s low income and minority population.

Instead, we request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City’s existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

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- **Ongoing meaningful oversight and accountability**

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,

The Rosewood Initiative

Moore-Love, Karla

From: Matt Malmsheimer <MMalmsheimer@hk-law.com>
Sent: Wednesday, September 28, 2016 10:29 AM
To: Council Clerk – Testimony
Subject: Written Testimony - Agenda Item 1088 on Water Bureau Report to City Council
Attachments: 20160928102440.pdf

Attached please find written testimony on Agenda Item 1088 scheduled for 2:45 pm today.

Than you.

Matt Malmsheimer
Haglund Kelley LLP
200 SW Market St., Suite 1777
Portland, OR 97201-5727
Telephone: (503) 225-0777
Facsimile: (503) 225-1257
Email: mmalmsheimer@hk-law.com
Web: www.hk-law.com

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Sara Ghafouri
Eric J. Brickenstein

LeRoy W. Wilder
Retired

September 28, 2016

VIA EMAIL

Mayor Charlie Hales and Portland City Council
1221 SW 4th Avenue, Room 340
Portland, OR 97204

Re: Community Benefits Agreement Report to Council

Dear Mayor Hales and Commissioners Fritz, Novick, Saltzman, and Fish,

I write today on behalf of the Metropolitan Alliance for Workforce Equity ("MAWE") and the Pacific Northwest Regional Council of Carpenters ("Council") to urge you to vote no on the Water Bureau's report regarding the pilot Community Benefits Agreements ("CBAs") on the Kelly Butte and Interstate projects and to reject the Bureau's recommendations contained in that report. Make no mistake, not only does this report distort the true success story of the CBAs, its recommendations are the first step in undoing that success and returning the City to the *status quo*. As the Equitable Contracting and Purchasing Commission ("ECPC") reported, the City's equity efforts outside the CBA have proven to be ineffective to the task of overcoming the appalling history of discrimination on the City's construction projects. I write to address a number of issues that have been raised about components of the CBA that are widely recognized as best practices – even by the City's independent evaluation – but which the Water Bureau report recommends abandoning without justification.

First, we have heard concerns that state law prohibits the City from entering into a signatory agreement such as the CBA with the unions because such an agreement would be favoring unions. That is not true. The State's labor relations laws do not stand in the way of such an agreement; governmental entities such as the City are specifically exempted from the labor relation statutes. ORS 663.005(4)(b). And the Public Employee law's prohibition on governmental influence of its employees' and subcontractors' decisions regarding union participation and representation also does not limit the City's ability to enter into a future CBA. By its terms, that law only applies to unions that represent "employees in their employment relations with *public employers*." ORS 243.650(13) (emphasis added). In other words, it only applies to unions representing *City employees*, not those representing the tradespeople employed by a contractor for the City. In addition, ORS 243.670 specifically exempts any activities carried on by the City in "negotiating, entering into or carrying out *an agreement with a labor organization*." ORS 243.670(4)(d) (emphasis added). Far from creating a legal liability, an

agreement with the signatory unions would actually further insulate the City from potential litigation.

Plainly, the use of a signatory document is squarely within the City's discretion, as demonstrated by Multnomah County's use of a signatory Project Labor Agreement ("PLA") on the new Courthouse. As a matter of policy, the signatory aspect of the CBAs makes them mutually enforceable, binding agreements. As such, the CBA model is a far more powerful enforcement tool, which is highlighted by the unprecedented success of the pilots in meeting their diversity goals. The accountability, contractor commitment, and union engagement that a signatory agreement fosters were recognized by the City's independent evaluation as an important component of the CBAs' success. It is why the signatory aspect is recognized by the academic research as a best practice. And it is why it is impossible to understand the Water Bureau's recommendation to abandon it.

Next, Commissioner Fish stated that the diversity goals on the Washington Park Community Benefits Plan ("CBP") are more aggressive than those on the CBA and thus the CBP model should be embraced. However, while the percentage goals are numerically higher, those workforce and contracting goals are aspirational and only require good faith and reasonable efforts. Again, this is precisely the type of unenforceable provision that has led to the abysmal results in the City's other diversity efforts, such as the Good Faith Efforts program, which has resulted in little more than efforts. Importantly, the very failure of the Good Faith Efforts program demonstrated by the ECPC report and the City's own data on the lack of diversity despite such efforts is a precondition to imposing both binding goals and race and gender conscious goals. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 507-08 (1989); *United States v. Paradise*, 480 U.S. 149, 171-77 (1987). In other words, the evidence unveiled by the ECPC and presented to Council paves the way for implementing the hard – rather than aspirational – goals and race and gender specific tools that are plainly needed to overcome the continuing reality of race and gender disparity on the City's construction jobs.

One of the most troubling aspects of the Water Bureau report is that it recommends eliminating CBAs from any future projects and replacing them with the Community Equity and Inclusion Plan ("CEIP"), a plan that has not even been presented to Council. The CEIP was drafted entirely without any input from the community. Not coincidentally, it eliminates many of the tools that even the City's independent evaluation recognized as best practices coming out of the CBAs. Important among those tools is genuine oversight authority for a community oversight group such as the Labor Management Community Oversight Committee ("LMCOC"). The remote oversight that has been implemented on the City's other diversity efforts, including most recently the Washington Park CBP, has been shown not to work. However, if the recommendations in this report are accepted, that remote oversight authority will be the model to which the City returns. As the ECPC's presentation two weeks ago plainly demonstrated, such remote oversight has failed to create any significant or lasting change in the contracting and hiring practices on City projects.

In addition, the Water Bureau report recommends that equity programs, even the CEIP, only be applied to alternative contracting projects such as the CMGC model, which account for the smallest proportion – approximately 5% – of the City's construction contracts. The CBA is not so limited, and there is no justification for such a limit. The state's public contracting laws do not require it. The Public Contracting low-bid statute requires the City to award low-bid contracts to the "lowest *responsible* bidder." ORS 279C.375(1) (emphasis added). In order to qualify as the "lowest responsible bidder," a contractor must demonstrate that it has the ability to "meet *all* contractual terms." ORS 279C.375(3)(b)(A). If a CBA is part of the contractual terms, then a contractor seeking a low-bid award must establish its ability to meet its terms. As the Washington Supreme Court recognized in interpreting its similar low-bid public contracting law, the concept of "responsible bidder" contains the "legislative intent" that "the social responsibility of the contractor should also be a concern." *S.W. Washington Chapter, Nat. Elec. Contractors v. Pierce County*, 100 Wash. 2d 109, 115-16, 667 P.2d 1092 (1993). There is also nothing preventing the City from using the alternative contracting model for all of its construction contracts. In either event, the Water Bureau's recommendation that the City use its existing equity efforts to the majority of its construction contracts is again contraindicated by the ECPC's factual findings showing that those programs are not working.

Finally, I would like to remind the Council of the supporters of the CBA model who have spoken out against the Water Bureau's report as written and its misguided recommendations. They include the following organizations and individuals:

- Urban League of Portland
- Pacific Northwest Regional Council of Carpenters
- IBEW Local 48
- Constructing Hope
- Oregon Tradeswomen
- Portland YouthBuilders
- Laborers Local 737
- Columbia Pacific Building Trades
- SEIU Local 49
- Coalition of Communities of Color
- Hacienda CDC
- Rose CDC
- APANO
- Jade District
- East Portland Action Plan (EPAP)
- Metropolitan Alliance for Common Good (MACG)
- Division Midway Alliance
- Danielle Marcial, City of Portland Water Bureau utility worker, Liuna member
- Roberta Hunte, PSU professor and filmmaker (Sista in the Brotherhood)
- Dawn Jones-Redstone, Carpenter and filmmaker (Sista in the Brotherhood)

Mayor Charlie Hales and
Portland City Council
September 28, 2016
Page 4

In closing, I again urge you Mayor Hales and City Commissioners to vote to reject the Water Bureau's report as written. It ignores the important historic successes of the CBA and the lessons learned from the pilots, and its recommendations would take the City backwards in its equity efforts.

Very truly yours,

Matt Malmsheimer

MEM/akt



Moore-Love, Karla

From: Casey Barnard <cbarnard@worksystems.org>
Sent: Wednesday, September 28, 2016 10:26 AM
To: Council Clerk – Testimony
Subject: agenda item #1088 written testimony
Attachments: CBA_Written Testimony_Casey Barnard.docx

Please accept my written testimony regarding the CBA Pilot Projects.

Thank you,
Casey

Casey Barnard
Senior Project Manager
Worksystems, Inc
1618 SW 1st Ave. Suite 450
Portland, OR 97201
p 503.478.7329
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Nick Fish, Commissioner
Michael Stuhr, P.E., Administrator

1120 SW 5th Avenue, Room 600
Portland, Oregon 97204-1926
Information: 503-823-7404
www.portlandoregon.gov/water



REPORT TO COUNCIL

*a ask to put in record
as attachment to report*

September 2, 2016

Accept evaluation of the effectiveness on the Community Benefits Agreement piloted on the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects (Report)

On September 5, 2012 Resolution No. 36954 directed the Portland Water Bureau to pilot the Community Benefits Agreement (CBA) in support of the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects. Both were alternative construction projects. City Council directed Procurement Services staff to work with Portland Water Bureau to evaluate the effectiveness of the CBAs for both projects in meeting the goals and objectives of the City and the principles set forth in the resolution and to report back to Council. This report includes that evaluation of the effectiveness the CBA had in meeting the principles set forth in the resolution.

On March 26, 2013 the City of Portland and stakeholders executed modified versions of the Model CBA for both the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects. Stakeholders included representatives from Hoffman Construction Company, State of Oregon certified disadvantaged, minority, women and emerging small business (DMWESB) subcontractors; unions; community based organizations serving minority, women, and low income people; and City employees. The stakeholders were challenged to develop and administer the two pilot CBAs. Because the CBA stakeholders and the agreements were identical and administered jointly, this evaluation addresses both construction projects.

The CBA model agreement is similar in many respects to Project Labor Agreements (PLAs) commonly used on the East Coast where there is a much higher incidence of labor strikes and unrest. This has not generally been experienced on the West Coast. In fact, there were no labor disputes encountered on either the Kelly Butte Reservoir or Interstate Maintenance Facility Renovation Projects (Projects) which needed to be addressed using the terms of the agreements.

In addition to the provisions common to PLAs, the model CBA also contained a number of provisions designed to increase workforce and subcontractor utilization. The evaluation of the CBA pilots in these respects revealed benefits and deficiencies for both Projects that are identified in detail in this report.

Both Projects met all CBA workforce and subcontractor utilization goals except for the aggressive goal set for female journey level participation. The market availability for journey women was identified as a constraint from the onset of the Projects. There were no issues with wage benefits or unskilled labor and neither of the projects encountered any problems with efficiency or productivity. Prevailing wage were paid on both projects.

The CBA did create a new mechanism to use for holding contractors, subcontractors and stakeholders accountable for goals and active compliance monitoring, beyond what the City has used in the past, but also had some major deficiencies which included:

- Although we found no conflict of interest, the Model and the modified versions of the CBA had the potential to create conflicts of interest.
- While pre-apprentices were being trained from the project budget, most of these individuals did not work on these precise projects. However, it is anticipated that these individuals will now be available to work on future bureau projects.
- There were indistinguishable improvements using the CBA compared to the City of Portland's existing MWESB subcontracting processes/goals that have been achieved on other alternative procurement projects that did not have a CBA.
- Very few of the workers and firms that received support and technical assistance from the project budget worked on the pilot projects.
- Administrative costs for the CBA were higher than comparable program administrative costs.

Lessons Learned and Recommendations

The pilot CBAs provided valuable information and lessons learned in moving the City of Portland forward in the development of a more robust instrument to employ for future City of Portland construction projects that use an alternative procurement method. The City recognizes the importance of institutionalizing a process, or citywide system that will help enable future alternative procurement construction projects achieve more aggressive social equity contracting goals.

The City is committed to taking the lessons learned and the benefits of the CBA and creating an updated MWESB Program and some form of Community Equity and Inclusion Plan (CEIP) that can be used for alternative construction methods that will enable projects to achieve higher subcontracting and workforce diversity goals.

What the City learned on the two pilot projects, with community input and considering the lessons learned from the pilot projects, will be used in development of CEIP and modification to the City's existing MWESB program going forward.

These Plans will ensure that the public served by the City receives the fullest benefit of the project undertaken by the City, and will ensure that the City does not directly or indirectly perpetuate the under-inclusion of racial and ethnic minorities and women in the construction industry and trades. The CEIP also assists the City in receiving the benefit of a highly skilled, well-trained and diverse workforce and contractor and subcontractor pool.

The CEIP also supports workforce diversity, and retention to Minority, Women, and Disadvantaged Business Enterprise firms and minority and women workers. Enhancements that can be made going forward include:

- With regard to measurable improvements to workforce and contracting diversity goals, the CEIP has a different structure to avoid placing our community partners in the situation where they may face an appearance of conflicts.
- The CEIP might have a compliance committee or the ECPC or a subcommittee to serve as the advisory body to help the City and contractors more fully achieve the workforce diversity and minority and women contracting goals on the project and the City as a whole.
- City would retain full authority and oversight on how the project specific dedicated fund account (1% Funds) is allocated to comply with the City's responsibility to retain responsibility for use of public funds and to avoid a situation that could give rise to real or perceived conflicts of interest. In addition, conflict of interest statements would be required of any compliance committee or ECPC and will be maintained in the City's Project files for record.
- CEIP provides the Construction Contractor the absolute right to select any qualified bidder for the award of contracts on the project provided that, such bidder is willing, ready, and able to comply with the CEIP for the project.
- Awarding of grants or contracts for the services used through the dedicated 1% Funds account will take place through a competitive application process, facilitated by the City, using the City's Procurement practices.
- A CEIP will be accomplished without the mandatory union employment, as plan, not a project labor agreement. This will avoid the divisive and legal complexity that the CBA created. The CEIP expects and encourages substantial but not exclusive union participation.
- Do not utilize the model draft CBA for future projects, but work collaboratively with City bureaus and community partners to create an updated plan that improves upon the model CBA, the modified CBA used on the Kelly Butte and Interstate Project without starting over.
- Apply the CEIP to all alternative procurement projects.
- Do not apply a CEIP to low bid projects. Continue using the City's existing MWESB programs for low bid projects.

State 10 reg 4's
alternative
procurement


- The pilot CBA goals were comparable to other city projects that met MWESB participation goals but did not have a CBA.
- The City needs to set clear roles and responsibilities that provide more training/support/structure/focus and ensure that there are no conflicts of interest for whatever committee reviews compliance in meeting the DMWESB goals.
- To avoid contractual complications and claims, move the committee to an advisory role outside of the City-Contractor relationship. Have the committee report to and advise the City and ECPC.
- Have the City continue providing contract compliance oversight of the contractor.
- In the review committee going forward, include labor unions, non-union contractors, members from various minority communities participate.

The CEIP will be another effective citywide tool to use for implementing a process that can be used where appropriate and can provide opportunity for alternative procurement construction projects to achieve aggressive equity inclusion and diversity goals. The CEIP allows for flexibility to work with the contractor on DMWESB requirements; creates inclusive, equitable and realistic targeted hiring goals that can be clearly communicated and measured; educates stakeholders and communicates the goals of the City's Equity Programs; and develops a strong system for contractor engagement and promoting Women and Minority Business Enterprise participation, and continues to encourage optional union participation.

While the CBA provided benefits to the projects, the deficiencies identified in this report also had negative impacts on both the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects. Those negative impacts are addressed further in the final report of the Community Benefits Agreement Pilot Evaluation, appendices and memorandum from City's Chief Administration Officer Fred Miller, attached to this report as Exhibits A, A1, and A2. The evaluation was performed by an independent consultant hired by the Office Management and Finance to assess the effectiveness of the pilot CBA's.

The CBA Labor Management Community Oversight Committee (LMCOC) also completed a report on the CBA pilot projects summarizing their outcome, CBA framework and processes, best practices and lessons learned. That report is attached as Exhibit B.

In addition, Exhibit C is a memorandum from the City's Chief Administrative Officer that summarizes the key findings from the OMF's CBA Pilot Evaluation Report and provides a policy framework on what should be considered for any future agreements or plans.


 Michael Stuhr, P.E.
 Administrator

TO THE COUNCIL:

The Commissioner of Public Works concurs with the above, and;

RECOMMENDS

That the Council accept the evaluation, lessons learned and recommendations of the effectiveness on the Community Benefits Agreement piloted on the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects.

Respectfully submitted,

Commissioner Nick Fish



CITY OF PORTLAND

OFFICE OF MANAGEMENT AND FINANCE

Charlie Hales, Mayor
Fred Miller, Chief Administrative Officer
1120 SW Fifth Ave., Suite 1250
Portland, Oregon 97204-1912
(503) 823-5288
FAX (503) 823-5384
TTY (503) 823-6868

Exhibit A2

May 9, 2016

To Whom It May Concern:

When Council approved the modified Community Benefit Agreements (CBAs) for two Water Bureau projects, they asked that a review of the projects be done upon their completion. That review is attached and will be discussed with the Water Bureau reports on the projects in June.

As with all pilot projects, there are lessons to be learned. The proposal for allocating 1% of hard construction costs to Community Opportunities and Enhancements for the Portland Building will benefit from the experiences of these CBAs as well as Parks' Community Benefit Plans.

Looking towards the future, I am confident we will reach our aggressive diversity goals on the Portland Building Reconstruction project with our Equity and Inclusion Plan. The 1% for Community Opportunities and Enhancements will also assist in this effort.

Sincerely,

Fred Miller
Chief Administrative Officer

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CITY OF PORTLAND

OFFICE OF MANAGEMENT AND FINANCE

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Fred Miller, Chief Administrative Officer
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September 6, 2016

EXHIBIT C

TO: Mike Stuhr, Portland Water Bureau Director

FR: Fred Miller, Chief Administrative Officer

RE: Community benefits and opportunities

The City of Portland executed its first modified Community Benefits Agreements (CBAs) on two Water Bureau construction projects: Kelly Butte Reservoir and Interstate Maintenance Facility Renovation in October 2012. In discussions with the City Council last year on the Portland Building Reconstruction project, Council requested that OMF complete an outside review of the CBAs used on these two projects to determine what lessons we should apply to future projects. That evaluation was completed and I shared it with you and the Council on May 9, 2016.

This memo has two purposes:

- Summarize the key findings from the outside evaluation.
- Identify issues for consideration in crafting a future agreement or plan.

I understand that the Water Bureau is scheduled to present the final report to Council on the two projects in late September, so I want to get this in your hands before then.

Key findings from the CBA Pilot Evaluation

Community stakeholders, the construction contractor and City employees worked hard on some very important equity contracting goals for these two projects. While we should acknowledge this effort and recognize that these projects were successful in meeting the goals, the evaluation identified opportunities to improve future agreements or plans. The evaluation found:

- **CBA-funded programs had limited direct impact on the two pilot projects.** Few of the workers and firms participating in CBA-funded programs were placed on or subcontracted to the two Water Bureau projects.
- **The Labor Management Community Oversight Committee (LMCOC) had too many responsibilities.** The CBA assigned the LMCOC roles and responsibilities that were inappropriate for a volunteer organization with no legal identity and no formal staff.

CBA governance created potential for conflicts of interest. CBA programs and strategies were designed, executed and managed by a relatively small number of individuals, and a number of the organizations on the LMCOC were also awarded contracts by the LMCOC. This created the appearance of conflict of interest. Meeting minutes noted the need for conflict of

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interest statements, but the LMCOOC did not require members to sign conflict of interest statements.

Contractual relationships, or lack of them, complicated how the funds were administered. The City contracted with Hoffman Construction, and Hoffman issued a Purchase Order to Construction Apprenticeship Workforce Solutions Inc. (CAWS). CAWS and Worksystems Inc. (WSI) were jointly identified in the CBA to be the recipient of a portion of the funds, but are separate legal entities. The LMCOOC agreed to have WSI/CAWS administer the funds but there was no contract or agreement between WSI/CAWS and the LMCOOC.

CBA program administration and start-up costs were relatively high. Costs to develop and administer the CBA programs were estimated at 17% of total program expenditures. This is higher than some City programs that also administer grants or contracts. These administrative costs did not include City staff time spent in LMCOOC meetings and other CBA sessions, the full cost of LMCOOC participant time, or time spent by Hoffman Construction representatives to attend LMCOOC meetings or to meet CBA reporting requirements.

CBA contracts were not performance-based. Contractors and community-based organizations selected by the LMCOOC to provide services were not required to complete deliverables or achieve specific outcomes in order to receive payment.

Comparable projects without a CBA also met comparable goals. The consultant evaluated the diversity achievements of four comparable City projects which used equity plans, and all but one would have achieved or exceeded CBA goals.

The CBA did not include audit provisions. The CBA did not include a requirement for a financial or program audit. In comparison, the Children's Levy and its programs are subject to independent financial audits and review by the City Auditor.

There are opportunities to now examine best practices for community benefits → need to specify best practices
San Francisco, LA, Seattle and other jurisdictions have found that comprehensive policies, rather than project-by-project solutions, to be the most effective means to establish a consistent worker pipeline and continuous job opportunities for women and minorities and women- and minority-owned businesses.

Issues to consider in crafting a future agreement or plan

As the City develops an approach to support equity in contracting and community benefits on future projects, it should review relevant issues central or related to the key findings communicated above. I asked my staff to begin to identify the various issues that any new agreement or plan would need to address. That starting list is below:

Public officials and ethics law

- Members of a group responsible for administering public funds would likely be considered public officials and public officials fall under Oregon Government Ethics Law. The procedures for the group would need to address conflicts of interest and other provisions.
- State ethics law outlines the process where public officials can receive official compensation or reimbursement of expenses associated with performing their role.

- Members would likely be considered City officials, as they were authorized to distribute funds for public benefit. City officials fall under the City Code Chapter 1.03 Code of Ethics. The procedures for the group would need to address steps for recusal and disqualification from decision making.

Public body, public meetings and public records

- Depending on its duties and how it is structured, the group may be considered a public body and would need to comply with public meetings and public records requirements.

Financial policies and best practices.

- Members of a group responsible for administering funds would need to comply with disclosure requirements of GASB 56 related party transactions.
- The program and contracts issued with program funds should be subject to independent financial audits and review and audit by the City Auditor.
- The program should include a cap for administrative expenses and track those separately from direct service expenses.
- The program should include close-out procedures at project completion.

Contracting best practices

- The agreement or plan should have clearly defined deliverables and requirements. Contracts related to implementing plan components should clearly define the specific outcome or performance required of the contractor.
- Contracting opportunities should be widely publicized and the agreement or plan itself should not identify fund recipients.

Use of ratepayer funds

- The City should examine how projects funded by ratepayer dollars should participate in community benefits plans.

Legal requirements for race-based or gender-based decision-making

- The City should examine how efforts to include race or gender as a basis for contracting decisions should be tailored.

Legal requirements for union preferences

- Inclusionary practices, allowing both union and non-union workers, would seem to allow for the largest eligible contracting and workforce participants to best meet the City's goals.
- Efforts to give union preferences should be based on actual project-specific issues and should be scope-specific. The necessity for such efforts should be verified through measurable, objective outcomes that union agreements address.
- Projects with a CBA should be compared with projects without a CBA to determine if there were impacts. The City should examine the four comparable projects the pilot evaluation report reviewed that did not have a CBA but had an equity plan to determine if the projects reported any issues with labor disruption, strikes or lockouts. The City should also examine if the projects reported any issues with workforce productivity, efficiency and workmanship and if the projects reported any issues with prediction of labor costs or labor and production schedules. Prevailing wage was required on all projects.

Legal considerations for multiple parties to the same contract

- City contracts have specific provisions and remedies for breach of contract and are usually between two parties – the City and the prime contractor, with provisions that implicate subcontractor obligations as well. Adding third parties to this contract may create a legal murkiness in determining obligations, enforcement and remedies for breach of contract.
- Where unions are involved, practices that allow the City contractor to “pierce the list” to hire minority and women workers to meet contracting goals may be practices we could put in place without requiring additional parties to be signatories to the contract.

Looking ahead

The City is committed to creating an improved tool for meeting minority and women contracting objectives on a broader range of projects in the form of a Community Equity and Inclusion Plan. With the assistance of the Office of Equity and Human Rights, the Equitable Contracting and Purchasing Commission, the contracting and minority contracting community, and with input from all bureaus, the City is working to create a plan. This plan would enable construction projects to achieve aggressive equity goals both in subcontracting and workforce diversity. This plan would also include the best ideas from prior approaches and incorporate improvements from the key findings and issues identified through the pilot CBAs and Community Benefit Plans (CBPs). The City will continue to engage stakeholders to develop a recommendation to ensure that the City achieves its social equity goals on these types of projects.

Please let me know if you need further information.

To: Portland City Council, Mayor's Office
1221 SW 4th Ave
Portland, OR 97204

September 28, 2016

CC: Procurement Staff, Water Bureau Staff

From: Casey Barnard, Worksystems

Re: Testimony provided to City Council on September 22, 2016

Dear City Commissioners and Mayor:

I provided oral testimony as part of the CBA Oversight Committee panel on September 22, 2016. This letter includes my oral testimony and additional notes. My name is Casey Barnard, I currently work for Worksystems, the local workforce development board. I previously worked for the Emerald Cities Collaborative. Over the last 4 years, I provided significant staff and project support to the Labor-Management-Community Oversight Committee presiding over the Community Benefits Agreement pilot projects.

You are going to hear from many people with differing opinions. I encourage you to truly listen to your fellow community members who served the CBA pilot projects over the last 4 years. They served as committed, open and transparent partners to the CBA Oversight Committee, and with one common goal: to make our City a more equitable place. In my opinion, the CBA has helped the City to move toward this goal, and only this brand of continued transparent oversight in partnership with community and labor will achieve equity for all. I implore our City Council members to embrace their community partners instead of turning the focus inward and pursuing equity without true community participation.

The membership of the CBA Oversight Committee included City staff, community, training, union and contractor partners - all working together to implement the CBA and deepen equity efforts. This group met throughout the pilot projects to review City and contractor data about diverse worker and contractor utilization, and developed collaborative strategies to implement the CBA. The CBA Oversight Committee also drafted a Final Report on the CBA Pilot Projects, released and distributed to City Council Members in April 2016. This report was drafted with significant input and edits from all members of the CBA Oversight Committee, including City staff, and I encourage City Council members to include this report in their consideration of next steps.

You may be wondering – why was the CBA needed in the first place? In plain terms: to help address historic inequities. The City of Portland commissioned a 2009 Disparity Study, which showed a statistically significant underutilization of minority and women owned prime contractors on City construction projects. **In July 2012, in response to the findings in the disparity study and the outcomes of the Fair Contracting Forum, the City passed Resolution No. 36944 titled "Social Equity Contracting Strategy to Increase Minority-Owned, Women-Owned and Emerging Small Business Utilization in City Contracting," which amongst other things, established an aspirational goal of 18% minorities and 9% women on City funded construction projects, and applied the goal to both apprentices and journey workers. These equity goals apply broadly to all City-funded construction projects - not just projects procured through specialized procurement mechanisms like CMCG.**

On September 5, 2012, the Portland City Council added an important tool to achieve equity to the City's tool kit when they unanimously passed Resolution No. 36954, approving the draft Model CBA for consideration on construction projects over \$15 million and piloted the CBA on two Portland Water Bureau projects: the Kelly Butte Reservoir and Interstate Maintenance Facility projects. I was there on that powerful day, when City leaders joined together with community and labor partners to do something historic. Today, I'm going to share some of the key achievements on the CBA pilot projects.

By enacting the CBA, and in support of standing City policy, partners committed to these principles:

- Ensuring contractors pay fair wages and benefits, and workers are treated fairly;
- Ensuring employment on construction projects reflects the diversity of the region;
- Ensuring full and equitable participation by disadvantaged businesses by including goals and strategies to increase business participation and capacity;
- Providing opportunities for people of color, women and local residents to participate in pre-apprenticeship and apprenticeship training programs;
- Avoiding potential project disruption by strikes or lockouts

The CBA included:

- Local Hiring Goals: focus on HUB Zones across the region that are predominantly low income areas, and hiring the majority of the workforce from the surrounding metropolitan area
- Career Pathways: for current and future workers – through the continuity of work
- Workforce Diversity Goals: 9% workforce participation for Women and 18% people of color. Federal goals for the metropolitan area are 6.9% for women and 4.5% for minorities.
- Utilization of Minority and Women-Owned Businesses: The CBA sets contracting goals and bid preferences related to the use of certified M/W/DBE & ESB contractors on City funded projects
- Training, Technical Assistance and Compliance Funds: .50 % of the total project cost to build a pipeline of qualified diverse workers and promote workforce equity through the recruitment, training and hiring of a diverse and qualified workforce, to be managed by Worksystems and CAWS. A .25% fund to support the cost of technical assistance to increase the capacity of M/W/DBE firms. A 0.25% fund to finance the operations of the Compliance Monitoring Subcommittee, including CBO participation to oversee the successful implementation

Now, I'm going to walk you through some of the primary achievements of the CBA pilot projects. All of the data was provided by the City's Procurement and Contracting Department as of April 2016, when both projects were substantially complete. The CBA pilot projects achieved incredible results in workforce diversity. The CBA disaggregated the workforce goals to drill down on all levels of work – with specific goals for apprentice and journey level hours. This was done to monitor and ensure that diverse workers were being brought into the pipeline through apprenticeship, and that these diverse workers were being retained and provided opportunities to continue to work as more senior journey workers. The CBA Oversight and Compliance Committees worked tirelessly to address shortfalls real-time – brainstorming how to connect underperforming contractors or trades with diverse talent, and identifying barriers in the system and creative solutions.

With goals including: 20% of work going to apprentices, 18% to minority workers, and 9% to female workers, both CBA pilot projects were extremely successful on nearly all fronts. Just looking at the Kelly Butte project, 50% of apprentices were minorities and 28% of apprentices were females – far exceeding the goals of 18% and 9% respectively. On Kelly Butte, 29% of journey workers were minorities – far exceeding the goal of 18%. Female journey workers was the only area where the CBA pilot projects failed to meet the goal of 9%. This short-coming was discussed at great length by the CBA Oversight

Committee, and was identified as an industry-wide problem that requires significant resources to move the needle. Partners believe that more CBA projects would provide just that opportunity.

The CBA Outreach and Training funds supported the transparent procurement of pre-apprenticeship training for 104 diverse workers. As you can see, 41% of people trained were women, 41% were African American, and a total of nearly 70% were people of color. These efforts enhanced the diversity of workers in the construction pipeline.

The CBA pilot projects also achieved incredible results in the utilization of historically underserved contractors – including Disadvantaged Business Enterprises, Minority-Owned Business Enterprises and Women-Owned Business Enterprises. The CBA disaggregated goals for these disadvantaged businesses from emerging small businesses – typically the goals for all of these businesses are lumped together. The CBA goals included an aggregate goal of 22% for D/M/WBE and ESBs, with a sub-goal of at least 12% of the work going to historically disadvantaged businesses. As you can see, this focus on disadvantaged businesses garnered historic utilization of these businesses. Across both CBA pilot projects, 26% of total dollars (almost \$24 million) went to disadvantaged contractors. 68 D/M/WBE firms worked on the CBA pilot projects. To clear up a common misconception, both union and non-union disadvantaged contractors could and did participate in the CBA projects.

To put this success in historic context, we looked at the performance of the 2 pilot projects in August 2013 (after the pilot projects had been underway for only 8 months). We found that the amount of revenue earned by African American-owned firms on the CBA pilot projects (at \$5.9 million) had already exceeded the total dollar amount of 5 years of City of Portland contracts to African American-owned firms (at \$4.3 million) as identified by the 2009 Disparity Study.

The CBA Disadvantaged Contractor Technical Assistance funds supported technical assistance to 26 disadvantaged firms who either worked on the CBA pilot projects, bid or could have bid on the projects. The TA program also helped disadvantaged contractors to build their capacity to do this work going forward, and included hands-on business coaching and access to estimating and bidding software and training. Of the 26 disadvantaged businesses who received TA, 17 were non-union and 9 were union contractors. The contractors were surveyed and gave the TA services high marks – with an average score of 8.93 out of 10.

We are very proud of these incredible equity results on the CBA pilot projects, and we hope the City Council and community members are too. I believe City Council had a long discussion about the City's efforts around construction equity during the Equitable Contracting and Procurement Commission (ECPC) presentation last week, and the City's own data showed that we still have a long way to go to meet the goals of the City's equity resolutions. **Here, the CBA pilot projects have shown tangible progress towards equity. I ask that you build on these efforts, and apply the lessons learned, instead of throwing the baby out with the bath water. Thank you.**

After my testimony, Commissioner Fish expressed concern about my use of the phrase “throwing the baby out with the bath water.” He explained that the City, by moving away from the CBA to a different model, is actually holding itself accountable and raising the bar by increasing equity goals. I would suggest that the City has always been accountable for the equity goals it set in various resolutions (on all projects including low bid, not just CMCG projects). While I commend the City for increasing equity goals, if I have learned one thing in four years of tirelessly working on these issues, it is that goals alone are never enough without the effective means to achieve those goals. I maintain

that the core of what made the CBA so effective – the “baby” in this analogy – is the open and transparent partnership with community and labor, and shared oversight and significant work by experts in the construction industry, equity and workforce training. If the City pursues a “go-it-alone” strategy as is indicated by the Community Benefits Plan and future iterations that are being proposed by the Office of Equity, the City risks much more than the frustration of community and labor partners – the City risks turning its back on the most promising proven approach to date, reverting to business as usual, reducing transparency and allowing a few people to control the flow of information, and continuing to achieve subpar results in equity. To state that community and labor partners should devote endless hours to supporting equity efforts on projects they are not signatory to, is to undervalue their contributions and equates to asking someone “if you like your job so much, why wouldn’t you just do it without an employment contract?”

I am writing today to encourage you to **vote *against*** accepting the report to Council regarding the CBA pilots as written. The report does not accurately describe the successes and lessons learned from the CBA pilots, and will set the wrong precedent. The CBA pilot project results speak for themselves, and the number of partners who showed up to testify in support of the CBA should be an indication of community and labor support for the model. The Community Benefits Plan projects have not yet demonstrated success and although there are advisory committees attached to the CBP, it appears they are kept at arms-length as compared with the CBA Oversight Committee – the Washington Park Advisory Committee has not met, yet the projects have already broken ground. The proposed “Community Equity and Inclusion Plan” continues to erode what made the CBA pilot projects so successful, and does not have crucial support from the community or labor. There are numerous issues with the report to City Council regarding the CBA pilot projects and proposed next steps, including:

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- **Built-in mechanisms to support the necessary community capacity building**, not capped at 1% of project costs
- **Ongoing meaningful oversight and accountability**

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,

Casey Barnard
Worksystems

To: Portland City Council, Mayor's Office
1221 SW 4th Ave
Portland, OR 97204

September 28, 2016

CC: Procurement Staff, Water Bureau Staff

From: Casey Barnard, Worksystems

Re: Testimony provided to City Council on September 22, 2016

Dear City Commissioners and Mayor:

I provided oral testimony as part of the CBA Oversight Committee panel on September 22, 2016. This letter includes my oral testimony and additional notes. My name is Casey Barnard, I currently work for Worksystems, the local workforce development board. I previously worked for the Emerald Cities Collaborative. Over the last 4 years, I provided significant staff and project support to the Labor-Management-Community Oversight Committee presiding over the Community Benefits Agreement pilot projects.

You are going to hear from many people with differing opinions. I encourage you to truly listen to your fellow community members who served the CBA pilot projects over the last 4 years. They served as committed, open and transparent partners to the CBA Oversight Committee, and with one common goal: to make our City a more equitable place. In my opinion, the CBA has helped the City to move toward this goal, and only this brand of continued transparent oversight in partnership with community and labor will achieve equity for all. I implore our City Council members to embrace their community partners instead of turning the focus inward and pursuing equity without true community participation.

The membership of the CBA Oversight Committee included City staff, community, training, union and contractor partners - all working together to implement the CBA and deepen equity efforts. This group met throughout the pilot projects to review City and contractor data about diverse worker and contractor utilization, and developed collaborative strategies to implement the CBA. The CBA Oversight Committee also drafted a Final Report on the CBA Pilot Projects, released and distributed to City Council Members in April 2016. This report was drafted with significant input and edits from all members of the CBA Oversight Committee, including City staff, and I encourage City Council members to include this report in their consideration of next steps.

You may be wondering – why was the CBA needed in the first place? In plain terms: to help address historic inequities. The City of Portland commissioned a 2009 Disparity Study, which showed a statistically significant underutilization of minority and women owned prime contractors on City construction projects. **In July 2012, in response to the findings in the disparity study and the outcomes of the Fair Contracting Forum, the City passed Resolution No. 36944 titled "Social Equity Contracting Strategy to Increase Minority-Owned, Women-Owned and Emerging Small Business Utilization in City Contracting," which amongst other things, established an aspirational goal of 18% minorities and 9% women on City funded construction projects, and applied the goal to both apprentices and journey workers. These equity goals apply broadly to all City-funded construction projects - not just projects procured through specialized procurement mechanisms like CMCG.**

On September 5, 2012, the Portland City Council added an important tool to achieve equity to the City's tool kit when they unanimously passed Resolution No. 36954, approving the draft Model CBA for consideration on construction projects over \$15 million and piloted the CBA on two Portland Water Bureau projects: the Kelly Butte Reservoir and Interstate Maintenance Facility projects. I was there on that powerful day, when City leaders joined together with community and labor partners to do something historic. Today, I'm going to share some of the key achievements on the CBA pilot projects.

By enacting the CBA, and in support of standing City policy, partners committed to these principles:

- Ensuring contractors pay fair wages and benefits, and workers are treated fairly;
- Ensuring employment on construction projects reflects the diversity of the region;
- Ensuring full and equitable participation by disadvantaged businesses by including goals and strategies to increase business participation and capacity;
- Providing opportunities for people of color, women and local residents to participate in pre-apprenticeship and apprenticeship training programs;
- Avoiding potential project disruption by strikes or lockouts

The CBA included:

- Local Hiring Goals: focus on HUB Zones across the region that are predominantly low income areas, and hiring the majority of the workforce from the surrounding metropolitan area
- Career Pathways: for current and future workers – through the continuity of work
- Workforce Diversity Goals: 9% workforce participation for Women and 18% people of color. Federal goals for the metropolitan area are 6.9% for women and 4.5% for minorities.
- Utilization of Minority and Women-Owned Businesses: The CBA sets contracting goals and bid preferences related to the use of certified M/W/DBE & ESB contractors on City funded projects
- Training, Technical Assistance and Compliance Funds: .50 % of the total project cost to build a pipeline of qualified diverse workers and promote workforce equity through the recruitment, training and hiring of a diverse and qualified workforce, to be managed by Worksystems and CAWS. A .25% fund to support the cost of technical assistance to increase the capacity of M/W/DBE firms. A 0.25% fund to finance the operations of the Compliance Monitoring Subcommittee, including CBO participation to oversee the successful implementation

Now, I'm going to walk you through some of the primary achievements of the CBA pilot projects. All of the data was provided by the City's Procurement and Contracting Department as of April 2016, when both projects were substantially complete. The CBA pilot projects achieved incredible results in workforce diversity. The CBA disaggregated the workforce goals to drill down on all levels of work – with specific goals for apprentice and journey level hours. This was done to monitor and ensure that diverse workers were being brought into the pipeline through apprenticeship, and that these diverse workers were being retained and provided opportunities to continue to work as more senior journey workers. The CBA Oversight and Compliance Committees worked tirelessly to address shortfalls real-time – brainstorming how to connect underperforming contractors or trades with diverse talent, and identifying barriers in the system and creative solutions.

With goals including: 20% of work going to apprentices, 18% to minority workers, and 9% to female workers, both CBA pilot projects were extremely successful on nearly all fronts. Just looking at the Kelly Butte project, 50% of apprentices were minorities and 28% of apprentices were females – far exceeding the goals of 18% and 9% respectively. On Kelly Butte, 29% of journey workers were minorities – far exceeding the goal of 18%. Female journey workers was the only area where the CBA pilot projects failed to meet the goal of 9%. This short-coming was discussed at great length by the CBA Oversight

Committee, and was identified as an industry-wide problem that requires significant resources to move the needle. Partners believe that more CBA projects would provide just that opportunity.

The CBA Outreach and Training funds supported the transparent procurement of pre-apprenticeship training for 104 diverse workers. As you can see, 41% of people trained were women, 41% were African American, and a total of nearly 70% were people of color. These efforts enhanced the diversity of workers in the construction pipeline.

The CBA pilot projects also achieved incredible results in the utilization of historically underserved contractors – including Disadvantaged Business Enterprises, Minority-Owned Business Enterprises and Women-Owned Business Enterprises. The CBA disaggregated goals for these disadvantaged businesses from emerging small businesses – typically the goals for all of these businesses are lumped together. The CBA goals included an aggregate goal of 22% for D/M/WBE and ESBs, with a sub-goal of at least 12% of the work going to historically disadvantaged businesses. As you can see, this focus on disadvantaged businesses garnered historic utilization of these businesses. Across both CBA pilot projects, 26% of total dollars (almost \$24 million) went to disadvantaged contractors. 68 D/M/WBE firms worked on the CBA pilot projects. To clear up a common misconception, both union and non-union disadvantaged contractors could and did participate in the CBA projects.

To put this success in historic context, we looked at the performance of the 2 pilot projects in August 2013 (after the pilot projects had been underway for only 8 months). We found that the amount of revenue earned by African American-owned firms on the CBA pilot projects (at \$5.9 million) had already exceeded the total dollar amount of 5 years of City of Portland contracts to African American-owned firms (at \$4.3 million) as identified by the 2009 Disparity Study.

The CBA Disadvantaged Contractor Technical Assistance funds supported technical assistance to 26 disadvantaged firms who either worked on the CBA pilot projects, bid or could have bid on the projects. The TA program also helped disadvantaged contractors to build their capacity to do this work going forward, and included hands-on business coaching and access to estimating and bidding software and training. Of the 26 disadvantaged businesses who received TA, 17 were non-union and 9 were union contractors. The contractors were surveyed and gave the TA services high marks – with an average score of 8.93 out of 10.

We are very proud of these incredible equity results on the CBA pilot projects, and we hope the City Council and community members are too. I believe City Council had a long discussion about the City's efforts around construction equity during the Equitable Contracting and Procurement Commission (ECPC) presentation last week, and the City's own data showed that we still have a long way to go to meet the goals of the City's equity resolutions. **Here, the CBA pilot projects have shown tangible progress towards equity. I ask that you build on these efforts, and apply the lessons learned, instead of throwing the baby out with the bath water. Thank you.**

After my testimony, Commissioner Fish expressed concern about my use of the phrase "throwing the baby out with the bath water." He explained that the City, by moving away from the CBA to a different model, is actually holding itself accountable and raising the bar by increasing equity goals. I would suggest that the City has always been accountable for the equity goals it set in various resolutions (on all projects including low bid, not just CMCG projects). While I commend the City for increasing equity goals, if I have learned one thing in four years of tirelessly working on these issues, it is that goals alone are never enough without the effective means to achieve those goals. I maintain

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- Excluding any PLA language
- Capping any community investment to 1% of project costs
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- Explicitly calling out not using CBAs on future projects – with little to no justification for this approach
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Instead, I request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. I believe the City’s existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

- **High road construction career pathways** that pull people out of poverty

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Sincerely,

Casey Barnard
Worksystems

Moore-Love, Karla

From: Maggie Tallmadge <maggie@coalitioncommunitiescolor.org>
Sent: Wednesday, September 28, 2016 10:08 AM
To: Council Clerk – Testimony
Subject: agenda item #1088 written testimony
Attachments: agenda item 1088 _ Testimony _ Coalition Communities Color.pdf; Community Equity and Inclusion Plan DRAFT rev 9-1-16.docx; City_CBA_Council_Report_9-22-16.pdf

Dear Mayor Hales and Commissioners:

Please find attached my testimony and reports/evaluations I mentioned during my oral testimony.

Thank you,

Maggie

--

Maggie Tallmadge
Environmental Justice Manager
Coalition of Communities of Color
221 NW 2nd Ave #303, Portland, OR 97209
Email: Maggie@CoalitionCommunitiesColor.org
Phone: 781.697.0021



To: Portland City Council, Mayor's Office
CC: Procurement Staff, Water Bureau Staff
1221 SW 4th Ave
Portland, OR 97204

September 28, 2016

From: Maggie Tallmadge
Coalition of Communities of Color
221 NW 2nd Ave, Suite 303
Portland, OR 97209

Dear Mayor Hales and Commissioners:

Thank you for your work on this important issue and your vision of creating good jobs for all Portlanders.

First, I'd like to support the many others have offered testimony on the watered down evaluation that City staff has developed. There is a better way -- the CBA pilot Water Bureau projects delivered dramatically historic results, illustrating the potential positive outcomes when this tool is applied to large capital projects.

Second, I'd like to direct my testimony not only to this Council, but to also to the City staff working on this project. I want to ask you to take this time to see things through my eyes, through the eyes of many CCC members, and many of Portland's people of color.

When I walk through the central city on my way to the CCC's offices in old town, I pass by many of our downtown restaurants. And when I look into the windows, I almost always see a sea of white faces -- Portland's people of color? We're not there. We're a third of the population, but we're not there.

If I start to make my way across the river, and I walk by the many new buildings that are changing our city's skyline and image, and I look at the signs on the construction fences, I see the names of construction companies (general contractors, subcontractors, suppliers) and I see the names of professional services firms (architects, engineers, designers) -- businesses that are building multi-generational wealth and reputations in our construction boom. Portland's people of color? We're not there.

And often, my work takes me to the many institutions that lead our city -- our philanthropies, our financial institutions, our health systems, our development sector, our universities, our governments. I see CEOs, bureau directors, decision-makers. We're not there.

So, staff and Council, when you hear testimony today about the shortcomings of the program, when you listen closely to our guidance about why and how the



program needs to be changed, what we're really telling you is that we've looked at the program closely, and we're not there.

There are numerous issues with the document and proposed next steps, including:

- Capping any community investment to 1% of project costs
- Naming the "Community Equity and Inclusion Plan (CEIP)" as the go-forward template, to be used by all Bureaus going forward. This template is currently in early draft form and has had zero community input, instead has been written by internal City and legal staff. It is planned to go before City Council in December 2016
- Explicitly calling out not using CBAs
- Stating that the City will only apply the "CEIP" to alternative procurement projects, which are estimated to be merely 5% of total City contracts
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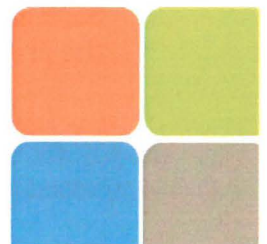
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Signed,



Margaret Tallmadge
Environmental Justice Manager
Coalition of Communities of Color



Community Equity and Inclusion Plan DRAFT



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PREAMBLE

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

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

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

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

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

Whereas, one purpose and objective of the compliance review by the Equitable Contracting and Purchasing Commission (“ECPC”) is in recognition of the necessity for tracking and communicating the achievement of the diversity goals of the Plan.

Whereas, the Owner will dedicate funds up to 1% of the Hard Construction Costs of the Project to establish a fund to provide resources for opportunities and enhancements and to create means by which to build community capacity and/or create economic opportunities for people of color, women, economically disadvantaged individuals and local contractors and organizations; and

Whereas, in order to conserve resources and to provide focused attention to obtaining equity in the Work performed on the Project under this Plan, the handling of the 1% funds will be addressed under a separate plan which may include, but is not limited to, funding for capacity building, technical assistance, workforce training, and apprenticeship opportunities; and

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

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

DEFINITIONS

Community Based Organizations (“CBO”) means public or private nonprofit that is representative of a community or a significant segment of a community, and is engaged in addressing and meeting common needs identified by that community. This includes, but is not limited to, Pre-Apprenticeship Programs and the organization who provide them.

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

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

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

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

Emerging Small Business Enterprise (ESB) means, for purposes of this Plan, only those firms certified as an ESB by the Oregon State Certification Office of Business Inclusion and Diversity (COBID). Current program participation is restricted to Oregon-based firms with 19 or fewer employees, with average annual gross receipts over the last three years not exceeding \$1.7 million for construction firms and \$300,000 for non-construction-related firms. An ESB must be properly licensed, legally registered, and an independently owned Oregon firm.

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

Equity efforts is defined as an honest, genuine, and good faith effort to meet the obligations imposed by this Plan, free from any intention or effort to avoid such obligations. The requirement of Equity Efforts shall also include the obligation to take all objective and verifiable steps outlined in the strategies of this Plan.

Fiscal Year runs from July 1 through June 30.

Hard Construction Costs means the cost to build improvements on a property, 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.

Minority Owned Business Enterprise (MBE) for purposes of the Plan means only those firms certified as a minority owned business by the Oregon State Certification Office of Business Inclusion and Diversity (COBID). A minority is defined to include Black American, Hispanic American, Native American, Asian Pacific American, Subcontinent Asian American. The management and daily operations of the firm.

Owner means the City of Portland.

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

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

Union means an organization of workers which has authorized an entity to represent their collective interests in employment-related negotiations in exchange for the payment of dues.

Women Owned Business Enterprise (WBE) means only those firms certified as women-owned businesses by Oregon State Certification Office of Business Inclusion and Diversity (COBID). The woman representative must own at least 51% of the firm and must have control of the management and daily operations of the firm.

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

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

ARTICLE 1 - PURPOSE

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

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

1.3 There is a desire to mutually establish and stabilize wages, hours and working conditions for the trade workers on the Project, to encourage close cooperation between the Parties to the end that a satisfactory, continuous and harmonious relationship will exist between the Parties to this Plan.

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

1.5 The unique and special needs of this Project are outlined below:

A. *[Insert unique qualities and special needs of the Project here]*

B.

C.

ARTICLE 2 - SCOPE OF PLAN

2.1 This Plan applies to all new construction, rehabilitation, alteration, conversion, extension, painting, repair, improvement or other construction work performed at the Project site that is contracted by the Owner or the Contractor.

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

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

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

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

2.6 The provisions of this Plan apply to the construction of the named Project. In recognition of the cooperative effort needed to accomplish the goals contained in this Plan and in order to ensure that those goals are met, the Owner, Contractor, Subcontractors, Unions, apprenticeship programs, and Community Based Organizations (CBOs) on the Project will make all necessary Equity Efforts as defined by this Plan. As allowable, Unions will take all steps necessary to assist and support their union signatory contractors in meeting the goals in this Plan.

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

2.8 Where an action, policy or process is not explicitly described in this Plan, the Contractor should act in good faith in accordance with the intention of this Plan.

ARTICLE 3 – COMPLIANCE REVIEW AND EQUITY ASSISTANCE BY THE ECPC

3.1 Purpose:

- A. Recognition of the necessity for cooperation and communication in achieving the diversity goals of this Plan.
- B. Agreement that the Equitable Contracting and Purchasing Commission (ECPC) is uniquely qualified to provide insight and recommendations on efforts that will support achieving the diversity goals of this Plan.

3.2 Goal: The ECPC will assist the Contractor and Subcontractors in achieving the diversity goals of this Plan and ensure compliance with the requirements of this Plan.

3.3 Requirements for the Compliance Review and Equity Assistance:

A. The following roles, responsibilities, and expected commitment shall set forth the guidelines for the work performed by the Owner and the Contractor with respect to the ECPC's compliance review:

1. Within thirty (30) days of council's authorization of the Request for Proposals, the Owner shall present the Project to the ECPC.
2. During the Preconstruction Services Phase of the Project and no later than sixty (60) days prior to the submission of the Guaranteed Maximum Price (GMP) or lump sum to council, the Owner and Contractor shall present to the ECPC the following information:
 - i. Contractor's and Subcontractor's outreach, training, anti-harassment and Equal Employment Opportunity initiative;
 - ii. List of Subcontractors, their anticipated scopes of Work, and the estimated subcontract amounts for subcontracts identified at that time; and
 - iii. Identify scopes of Work and subcontracts, if known, that resulted from the breakdown of subcontracts in excess of \$200,000 into targeted Work scopes.
3. During the course of construction and occurring each quarter, the Owner and Contractor shall present the prior three (3) month's data on the current utilization of women and minorities in apprenticeships, workforce, and subcontracting and shall also present a three (3) month forecast for the Project.
4. Within one month prior to the first quarterly meeting and within one month of each quarterly meeting held thereafter, the Owner shall provide to the ECPC the prior three (3) months documentation of the Contractor's Equity Efforts.
5. The ECPC may request meetings with the Owner and Contractor as needed to facilitate further information sharing and discussion on the achievement of this Plan's goals. Upon such request, the Owner and Contractor shall facilitate a meeting within two (2) weeks or such alternative later time frame as identified by the ECPC.

B. Compliance review will be undertaken by the ECPC, including the following:

1. Contractor's and Subcontractors' Equity Efforts as set forth in this Plan.

2. Contractor's and Subcontractors' compliance with recruitment and retention efforts set forth in this Plan, including outreach, training, anti-harassment, and Equal Employment Opportunity initiatives.
 3. Contractor's and Subcontractors' compliance with apprenticeship, workforce, and contracting goals and other goals and programs specific to the Project as set forth in this Plan.
- C. On a quarterly basis and as needed per the Owner's request, the ECPC will provide recommendations and information to the Owner and the Contract Compliance Specialist, including the following:
1. Provide suggestions and recommendations for reaching the Plan's goals, including but not limited to providing guidance on outreach and engagement of Subcontractors; and
 2. Facilitate connections to Unions, CBOs, and workers and serve as a liaison between Contractor, Subcontractors, Unions, community organizations, and workers.
- D. On a quarterly basis and as needed per the Owner's request, the ECPC will report its findings to the Owner and the Contract Compliance Specialist.
1. All Work Product provided, used or produced for compliance review of the Plan or for the Project are the exclusive property of the City of Portland.

3.4 Conflict Disclosure Certification

- A. All members of the ECPC shall complete the Conflict of Interest/Reference Form for City Board & Commission Appointments, attached hereto as Exhibit XXX.
- B. All members of the ECPC who participate in compliance review of the Plan will be required to certify that they are not in collusion or connection of any kind with any other contractor, person or firm, and that they are not a City official/employee or a business with which a City official/employee is associated, and that to the best of their knowledge, their employee(s), officer(s) or director(s) do not include any City official/employee or a relative of any City official/employee who:
1. has responsibility in making decisions or ability to influence decision-making on the Project to which this Plan pertains;
 2. has or will participate in evaluations, award or management of any contracts or subcontracts or grants related to the Project or the Plan; or
 3. has or will have financial benefits in the Project to which this Plan pertains.

- C. All members of the ECPC participating in compliance review of the Plan have an ongoing obligation to identify any Conflict of Interest that may arise during the course of their work on the Project. A Conflict of Interest occurs when a member of the ECPC is participating in official action which could or would result in financial benefit or detriment to that member, a relative of the member, or a business with which either is associated. To the extent a Conflict of Interest arises, that ECPC member shall publicly disclose the nature of such conflict to the City and, if necessary, recuse themselves immediately from all discussions, communications, recommendations, or decisions related to such conflict.

ARTICLE 4 – HIRING PROCEDURES

4.1 Purpose:

- A. Recognition that unions and CBOs engage in recruitment and retention efforts to increase the number of women and minority workers in the construction industry and can provide support to achieve compliance with the diversity goals of this Plan.
- B. Agreement that both union and non-union organizations must be utilized in order to encourage inclusionary practices and to access as many women and minority workers as possible.

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

4.3 Requirements for Contractor and Subcontractors:

- A. All trades people on the Project shall be either enrolled in a state or federally registered apprenticeship or pre-apprenticeship programs or shall be licensed and/or qualified at the journey level in the person's particular trade.
- B. Where applicable, Contractor and Subcontractors shall work with union hiring resources for employment opportunities.
- C. The Contractor or Subcontractor may request and the unions may refer applicants for the various journeymen and apprentice classifications covered by this Plan.
- D. The Contractor and Subcontractors shall notify the unions and non-union organizations of all opportunities for employment on the Project.
- E. Contractor and Subcontractors shall inform the unions, apprenticeship programs, and CBOs of the goals in this Plan and shall request that the unions, apprenticeship programs, and CBOs refer diverse journey level workers and apprentices in accordance with those goals.

- F. Contractor and Subcontractors shall comply with PCC 23.10 which requires that an applicant's criminal background history may not be considered prior to the conditional offer of employment, except to the extent an exemption applies.
- G. Nothing in this Plan limits the Contractor's or Subcontractors' rights to reject proposed employees. The Contractor or Subcontractor also have the right to reject any applicant for any reason provided that such right is exercised in good faith, and in a nondiscriminatory manner.

4.4 Exemptions:

- A. The Contractor or Subcontractor retains the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdictions, and select employees to be laid off.

ARTICLE 5 – COMMUNITY APPRENTICESHIP

5.1 Purpose:

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

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

5.3 Requirements for Contractor and Subcontractors subject to the Goals set forth above:

- A. For contracts (including Contractor and Subcontractors) in any tier of \$100,000 or more, twenty percent (20%) labor hours in each apprenticeable trade shall be worked by BOLI registered apprentices, federally registered apprentices in such trade. To qualify, apprentices must be enrolled in a state-approved or federally-approved apprenticeship program during all of the hours worked on the Project.
- B. Provide all apprentices a fair chance to perform successfully by providing the following:
 - 1. On-the-job training, including:
 - i. Only training programs approved by and registered with BOLI;
 - ii. Hands-on training; and

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

1. Maintain a written record of the requests for apprentices, including the name of the apprenticeship program, pre-apprenticeship program, community-based organization, union or open shop, the name of contact person, phone, fax, date, time, job location, start date;
 2. Submit proof of Contractor's and subject Subcontractor's registration as Training Agents with BOLI prior to beginning any Work on the Project.
 3. Maintain records of diversity of the on-site workforce to sufficiently allow the Owner to determine whether the Project is meeting the goals and to assess the rates of apprenticeship hiring of racial and ethnic minorities and women. These records shall include disaggregated racial, ethnic, and gender data. Such documentation shall be submitted to Owner on a monthly basis.
 4. Maintain documentation of good faith efforts made to meet the apprenticeship goals set forth above for the duration of the Project. Such documentation shall be submitted to the Owner on a monthly basis.
 5. Submit a Monthly Employment Report including all hours subject to prevailing wage rates, in addition to supervisors, foremen, and superintendents, which shall be submitted in accordance with submittal instructions on the report form to the Owner by the 5th day of each month.
 6. Maintain documentation of health insurance coverage and retirement benefits for workers employed on the Project or contributions at a comparable level to any such documented benefits purchased by the worker.
- I. Contractors and Subcontractors shall exercise best efforts and work in good faith to achieve the workforce goals and to fulfill the requirements as set forth above for the life of the Project, with particular emphasis on the recruitment and retention of apprentices from historically disadvantaged or underrepresented communities, including racial and ethnic minorities, women, and low-income people.

5.4 Exemptions:

A. Requests for Exemption:

1. Exemptions to the percentage goals set forth in Section 5.2 shall be subject to and follow the procedure set forth in City Administrative Rule 1.20 Section 5 – EXEMPTIONS.
2. Except where otherwise exempted above, exemptions outreach, training, or mentorship requirements must be approved by the Owner in writing prior to starting Work on the Project and shall comply with the following:

- i. All requests to exempt all or any portion of the Work on the Project shall be submitted to the Owner fourteen (14) days before any Work on the Project begins;
 - ii. All requests must include back up documentation supporting the validity of an exemption and good faith efforts taken to comply with the original terms of the Plan; and
 - iii. Requests for exemptions shall be directed to the Owner's Contract Compliance Specialist.
 3. Written requests for exemptions during the course of the Project will be considered by the Owner only for extreme circumstances.
- B. Should the Contractor and Subcontractors subject to Article 5 be unable to fulfill the 20% requirement for apprentice hours, then the Contractors or Subcontract may use the following methods, subject to written approval by the Owner:
1. Include hours worked on the Project by apprentices who are required to be away from the job site for related training during the course of the Project, but only if the apprentice is rehired by the same Contractor or Subcontractor after completion of related training; or
 2. Include hours worked on the Project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the twelve (12) month period following the apprentice's completion date.

ARTICLE 6 – COMMUNITY WORKFORCE RECRUITMENT AND RETENTION

6.1 Purpose:

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

6.2 Goals: For contracts at any tier of \$100,000 or more, the workforce diversity goals set forth below shall apply.

- A. Apprentices: The workforce diversity goals for minority and women apprentice workers shall be thirty-one percent (31%) of total project hours, which shall be disaggregated as follows:
 1. Twenty-two percent (22%) of total project hours by trade shall be worked by minority apprentices; and

2. Nine percent (9%) of total project hours by trade shall be worked by women apprentices.
- B. Journey Level: The workforce diversity goals for minority and women journey level workers shall be twenty-eight percent (28%) of total project hours, which shall be disaggregated as follows:
1. Twenty-two percent (22%) of total project hours by trade shall be worked by minority journey level workers; and
 2. Six percent (6%) of total project hours by trade shall be worked by women journey level workers.

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

A. Gather and utilize information on recruitment:

1. Conduct workshops with minority and women employees to enlist their assistance as recruiters and request their ideas on how to increase employment of underutilized groups.
2. 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.
3. Keep applications from qualified women and minorities for the duration of the Project, and contact them when an opening occurs.

B. Maintain a harassment-free workplace:

1. Owner will discuss its Prohibition Against Workplace Harassment, Discrimination and Retaliation Policy during the Pre-Construction Meeting and Contractor shall disseminate the policy to its employees and Subcontractors.
2. Provide a complete orientation to the job site to all workers, including procedures for reporting problems, and expected crew behaviors.
3. Verify that employees have received a copy of the Contractor's or Subcontractor's policies regarding harassment, discrimination, and retaliation.
4. Provide a list of resources to employees identifying support systems including, but not limited to, Equal Employment Opportunities, Employee Assistance Programs, and mentors.

5. Maintain a responsive grievance procedure that supports retention and anti-harassment efforts which will be prominently posted on the jobsite in a conspicuous and accessible location.
6. 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.

C. Support Equal Employment Opportunity initiatives:

1. Review and disseminate, at least annually, the Contractor's and Subcontractor's EEO policy and affirmative action obligations under this Plan with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.
2. Provide annual 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 Contractor's and Subcontractor's EEO policies, affirmative action obligations, and cultural competencies.
3. Provide the number of toilet facilities in an amount equal to the ratio of women working on the Project (with a minimum of one (1)) for people who identify as women on the job site. Do so by maintaining a clean, accessible and locking toilet for crew members who identify as women, and by removing graffiti immediately to help create a respectful environment.
4. Provide clean, accessible, private, and locking lactation facilities separate from toilet facilities, as needed.

D. Maintain documentation of best efforts of compliance with the strategies as set forth above and submit such documentation to the Owner upon request.

E. Contractors and Subcontractors shall exercise best efforts and work in good faith to achieve the workforce diversity goals and to fulfill the requirements as set forth above for the life of the Project, with particular emphasis on the recruitment and retention of apprentices from historically disadvantaged or underrepresented communities, including racial and ethnic minorities, women, and low-income people.

6.4 Exemptions:

A. Requests for Exemption:

1. Exemptions to the percentage goals set forth in Section 6.2 shall be assessed on a project-by-project basis through the Contractor's and Owner's assessments of the scopes of work for each trade implicated in the Project, current marketplace availability for such trades, and historical disparity data. In the event of an

exemption, a reduced percentage goal shall be substituted. The Unions may be the first source for the provision of minority and women workforce within the identified trades upon proof of the Unions' outreach and retention efforts for minority and women workers, ability to meet the capacity identified for each trades' percentage goals, and history of fulfillment of such utilization goals.

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

ARTICLE 7 – SUBCONTRACTING

7.1 Purpose:

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

7.2 Goals: For all work performed on the Project, the base-line utilization goal for firms that have been certified by the State of Oregon as a Disadvantaged Business Enterprise, Minority-Owned Business, a Women-Owned Business, or an Emerging Small Business (D/M/W/ESB) is twenty-two percent (22%) of the Hard Construction Costs for the Project, which shall be disaggregated as follows:

- A. Twelve percent (12%) minimum shall be Disadvantaged Business Enterprise (DBE) or Minority-Owned Business Enterprise (MBE);
- B. Five percent (5%) minimum shall be Women-Owned Business Enterprise (WBE); and

C. The remaining percentage shall be Emerging Small Business (ESB).

7.3 Requirements for Contractor and Subcontractors:

A. Provide subcontracting opportunities, including the following:

1. Identify subcontracting opportunities that will provide opportunities for D/M/W/ESBs to successfully bid, and which would build the capacity of these firms to bid for larger contracts on future Owner projects.
2. In order to allow smaller qualified contractors to successfully bid on subcontracts, the Owner shall require Contractor and Subcontractors holding subcontracts in excess of \$200,000 to provide targeted Work scopes where feasible as determined by the Owner.
3. Utilize the Owner's Prime Contractor Development Program (PCDP) participants as a first source in soliciting for scopes of Work for the Project.
4. Any D/M/W/ESB on the Project deemed to warrant replacement must be terminated in accordance with the provisions as set forth in this Plan. The basis for termination will be one or more of the following with supportive documentation:
 - i. Inability of the company to perform the Work as required.
 - ii. Refusal of the company to perform the Work as required.
 - iii. Mutual agreement of Contractor and the Subcontractor not to perform the Work due to reasons beyond the control or influence of Contractor or Subcontractor.
5. The Contractor shall not add, delete, or replace any Subcontractor after the bid is submitted or the Contract is awarded without the consent of the Owner's Chief Procurement Officer. The Contractor shall make good faith efforts to contract with a D/M/W/ESBs for the Work to be performed and submit along with documentation of their efforts, a Subcontractor Change/Request Form to the Owner's Contract Compliance Specialist for approval prior to making any changes.

B. Utilize equitable procurement procedures which shall consist of an open, fair, and competitive solicitation process, including the following:

1. Early identification of bidding opportunities, including:
 - i. Contractor shall identify all divisions of Work that will be subcontracted.
 - ii. Outreach shall start during the pre-construction services phases to provide advance notice to D/M/W/ESBs, including:

- a. Advance notice will also be sent to key trade and business organizations that promote utilization of minorities and women in public works projects.
 - b. Contractor shall contact firms by email and/or fax notifying them of the anticipated Work available on the Project.
 - c. Information shall be posted on the Contractor's website to facilitate assessment of the interest of D/M/W/ESBs for the Work on the Project.
 - d. Outreach shall continue during the life of the Project and will be tailored to specific opportunities made available in solicitation packages.
- iii. Contractor shall conduct pre-bid/pre-proposal meetings for all solicitation packages, including:
 - a. Fulfilling the purpose of the meeting which is to provide clarity and understanding of the Project and solicitation requirements, view the jobsite, and to advise bidders of the importance of the commitment to and expectations for D/M/W/ESB utilization.
 - b. Bidders/Proposers will be offered assistance in conducting effective solicitation steps to obtain D/M/W/ESB participation.
 - c. Contractor is required to notify the Owner's Contract Compliance Specialist and Owner of all pre-bid/pre-proposal meetings.
 - d. For solicitation packages with an estimated value greater than \$200,000, Contractor shall coordinate meetings with the Owner's Contract Compliance Specialist who must attend all pre-bid/pre-proposal meetings.
- iv. During the construction services phase, the Contractor shall conduct outreach conferences apprising the construction industry and D/M/W/ESBs of the subcontracting procurement process and approach to D/M/W/ESB utilization, including:
 - a. Information on anticipated solicitation dates and divisions of Work identified for D/M/W/ESB participation.
 - b. Conference attendees shall be informed of the resources that will be available to them during the bidding and construction phases.
 - c. A networking forum shall be included for prospective D/M/W/ESB Subcontractors and major and/or specialty Subcontractors.

2. Targeted solicitation methods, including:

- i. Contractor shall provide a solicitation package to interested D/M/W/ESBs and/or make it available for pick-up including all of Owner's contracting requirements as referenced in the Project's Contract Documents, including:
 - a. Before a solicitation is released, the Owner's Contract Compliance Specialist and the Owner's Representative will be provided with a copy of the solicitation package for review and comment.
 - b. Contractor will make themselves available to assist prospective D/M/W/ESB bidders in understanding solicitation requirements.
- ii. Subcontractors of any tier bidding or providing quotes on any package, division of Work and/or Work element having an estimated value greater than \$200,000 shall be required to meet the requirements of the Plan. Contractor shall deem bid proposals not meeting this requirement to be non-responsive
- iii. Contractor shall procure all Subcontractors and Suppliers for all divisions of Work in the completion of the Project using one or more of the following methods:
 - a. Informal Solicitations - Work packages estimated between \$50,000-\$200,000
 1. No public advertisement.
 2. Target a minimum of five D/M/W/ESBs in each division of Work.
 3. Contractor or Subcontractor shall send outreach letters to D/M/W/ESBs who specialize in the type of work that will be subcontracted and shall provide adequate information for submission of a bid, along with the date and time that sub-bids are due. Contractor shall obtain a total of three (3) bids from D/M/W/ESBs who specialize in the type of work that will be subcontracted.
 - b. Formal Price-Based Solicitations - Work packages estimated at greater than \$200,000
 1. Project solicitation packages shall be advertised in the *Daily Journal of Commerce* and a minimum of two minority publications (e.g., *El Hispanic News*, *The Skanner*, *The Portland Observer*, *The Asian Reporter*).
 2. Contractor or Subcontractor shall send outreach letters to D/M/W/ESBs who specialize in the type of work that will be subcontracted and shall provide adequate information for submission of a bid, along with the date and time that sub-bids are due. Contractor shall obtain a total of three (3) bids from D/M/W/ESBs who specialize in the type of work that will be subcontracted.

3. Contractor shall maintain three (3) full sets of plans and specifications for solicitation packages for review at local plan centers, such as (but not limited to), Daily Journal of Commerce, Oregon Association of Minority Entrepreneurs (OAME) Plan Center, Metropolitan Contractors Improvement Partnership (MCIP), and Ford Graphics. Confidential drawings must be handled separately and will only be distributed following the Owner's Confidentiality Policy.
- c. Formal Qualification-Based Solicitations ("QBS") - Work packages estimated at greater than \$200,000
1. Where the Work package involved requires specialized knowledge, skill, experience and expertise a Request for Proposal (RFP) may be used. RFPs must include the following criteria for diversity in contracting:
 - i. Describe your company's policy and practice of contracting with D/M/W/ESBs including the number of individual D/M/W/ESBs contracted, the dollar amount contracted and amount paid to D/M/W/ESBs over the past three years. List the name, nature of work, and dollar amount of each D/M/W/ESB for the cited projects.
 - ii. Describe objectives for increasing D/M/W/ESB subcontracting capacity in the Work of the Project, including an estimate of the dollar volume of D/M/W/ESB utilization you will aspire to achieve.
 - iii. Describe your company's hiring policy and practice for hiring, retaining and advancing minorities and women in your workforce.
 2. RFP's shall be publicly-advertised in the *Daily Journal of Commerce*, and a minimum of two minority publications (*e.g., El Hispanic News, The Skanner, The Portland Observer, The Asian Reporter*).
 3. Contractor or Subcontractor shall send outreach letters to D/M/W/ESBs who specialize in the type of work that will be subcontracted and shall provide adequate information for submission of a bid, along with the date and time that sub-bids are due. Contractor shall obtain a total of three (3) bids from D/M/W/ESBs who specialize in the type of work that will be subcontracted.
 4. Contractor shall maintain three (3) full sets of plans and specifications for solicitation packages for review at local plan centers, such as (but not limited to), Daily Journal of Commerce, OAME Plan Center, MCIP, and Ford Graphics. Confidential drawings must be handled separately and will only be distributed following the Owner's Confidentiality Policy.

C. Provide equitable assistance, including the following:

1. Assist qualified potential D/M/W/ESB bidders in the bidding and estimating process.
2. Once subcontracts are awarded and secured, Contractor shall offer all successful D/M/W/ESB Subcontractors, regardless of tier, technical assistance as necessary to ensure the successful completion of the subcontract. Such technical assistance shall be provided as requested by the Owner, which may include, but is not limited to, the following:
 - i. Establishing a schedule of values for the Work to be performed.
 - ii. Preparation of cash flow projections required for successful performance of the Work.
 - iii. Correctly calculate and submit pay requests, invoices, and required documentation to obtain progress payments consistent with the Owner's twice-monthly payment provisions.
 - iv. Advance payment for materials on hand where appropriate to facilitate successful participation of all tier D/M/W/ESBs.
 - v. Establishing projected measurable capacity building elements (e.g. additional equipment, expanded expertise, improved production efficiency, etc.) anticipated as a result of participating in the capacity building component of this Plan.
 - vi. Provide technical assistance and training in the use of BIM as needed and as it relates to specific scopes of Work for Subcontractors for the Project.
 - vii. Look for opportunities to increase the utilization of small D/M/W/ESB firms on incidental Project Work such as flagging, trucking/hauling, landscaping, or cleanup. Contractor may establish unit price Project packaging for Work such as trucking, erosion control, and flagging through which a pool of D/M/W/ESBs can profitably perform.
 - viii. Provide mentoring opportunities, including, but not limited to, teaming agreements with D/M/W/ESBs to partner on the Project through the sharing of general contractor duties and commensurate profits/losses on the Project, in order for the D/M/W/ESB to gain knowledge and experience not commonly passed on through the General Contractor/Subcontractor relationship.
3. All subcontracts are subject to the Owner's accelerated payment requirements specified in the General Conditions within the Contract Documents. In addition, Contractor shall release a Subcontractor's retainage upon completion and acceptance of the Subcontractor's Work, irrespective of whether the Owner has released any of the Contractor's retainage, except to the extent a claim or dispute exists as to that

Subcontractor's Work. These provisions are mandatory on all Project subcontracts at any tier.

4. Negotiate pricing and secure a material Supplier or group of Suppliers for eligible participants on particular aspects of the Project to purchase supplies and materials at the same cost in order to decrease or eliminate material pricing as a factor in the award of contracts to D/M/W/ESB firms.
5. Purchase Subcontractor Default Insurance meeting the requirements of payment and performance bonds as set forth in the statute, instead of requiring surety bonds from D/M/W/ESB Subcontractors. If an OCIP/CCIP is executed on this Project, this condition may become a part of that policy.
6. Contractor's designated diversity manager shall participate during the life of the Project and provide assistance to the Contractor and Subcontractors in the utilization of equitable procurement procedures and compliance with the Plan requirements.

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

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

7.4 Exemptions:

- A. Should the Contractor or Subcontractors fail to meet the goals set forth in Section 7.2, good faith efforts shall be submitted in Form 2 and reviewed by the Owner for compliance with the Equity Efforts.
- B. Should the Contractor or Subcontractors fail to obtain three (3) responsive bids as set forth in Section 7.3 (B)(2), good faith efforts shall be submitted in Form 2 and reviewed by the Owner for compliance with the Equity Efforts.

ARTICLE 8 – REPORTING REQUIREMENTS AND ADMINISTRATION

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

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

8.3 Requirements for Contractors and Subcontractors:

- A. Contractor and Subcontractors shall maintain documentation of compliance throughout the terms of Contract.
- B. Contractor and Subcontractors shall submit their completed documentation and provide reports to the Owner within the timeframe set forth below. Such documentation includes the following:
 - 1. All solicitation packages within thirty (30) days of sending out such solicitation;
 - 2. All solicitation results, including disaggregated racial, ethnic, and gender data, within thirty (30) days following award of the Subcontract;
 - 3. Inquiries of D/M/W/ESB interests in bidding, bid amounts, and contract awards, as requested by the Owner;
 - 4. Subcontractor & Supplier payments by the 15th of each month;
 - 5. Subcontractor replacement requests/decisions, as applicable;
 - 6. Technical assistance requested/provided and/or referred shall be provided quarterly;
 - 7. Apprenticeship results, including disaggregated racial, ethnic, and gender data by the 5th of each month;

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

ARTICLE 9 – COMPLIANCE

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

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

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

B. Liquidated Damages:

1. The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for Contractor's or Subcontractors' failure to comply with the requirements of this Plan. The parties further agree that it is difficult, if not impossible, to determine the cost to the Owner when, due to a lack of Equity Efforts, workforce diversity or D/M/W/ESB subcontracting opportunities are not provided in accordance with the Plan.
2. If Contractor or a Subcontractor fails to fulfill the requirements set forth in Section 4 "Hiring Procedures" or Section 5 "Community Apprenticeship" of this Plan, the Owner may assess and the Contractor or Subcontractor agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours until the breach is remedied or, if the breach cannot be remedied, \$2,000 for each violation.
3. If Contractor or a Subcontractor fails to fulfill the requirements set forth in Section 6 "Community Workforce Recruitment and Retention" of this Plan, the Owner may assess and the Contractor or Subcontractor agrees to pay damages of \$50 per day for each violation of noncompliance until the breach is remedied or, if the breach cannot be remedied, \$2,000 for each violation.
4. If Contractor or a Subcontractor fails to fulfill the requirements set forth in Section 7 "Subcontracting" of this Plan, the Owner may assess and the Contractor or Subcontractor agrees to pay damages of \$50 per day for each violation of noncompliance until the Project is complete or until the breach is remedied or, if the breach cannot be remedied, \$2,000 for each violation.
5. These damages are independent of any other damages that may be assessed under other provisions of the Contract.

C. Termination. If the Contractor or Subcontractor(s) are found to be minimizing their Equity Efforts or otherwise failing to comply with the spirit or intention of this Plan in order to minimize their obligation, the Contractor or Subcontractor(s) may be removed from the Project and may pay liquidated damages and direct damages related to the cost of work stoppage, construction delays, readvertising the Request for Proposals, and restarting the Work.

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

ARTICLE 10 - SEVERABILITY

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

DRAFT

Moore-Love, Karla

From: Tiffany Thompson <Tiffany@tradeswomen.net>
Sent: Tuesday, September 27, 2016 8:53 PM
To: Council Clerk – Testimony
Subject: Agenda item #1088 Written Testimony
Attachments: TT Agenda item #1088 Written Testimony.docx

Thank you for accepting this written testimony for the City Council hearing on September 28 at 2:45 pm.

Respectfully submitted,

Tiffany Thompson
Advocacy Program Manager

Oregon Tradeswomen, Inc.
3934 NE Martin Luther King Jr. Blvd. #101
Portland OR 97212

e: tiffany@tradeswomen.net
p: 503.335.8200 x 31
f: 503.249.0445
www.tradeswomen.net
www.facebook.com/OregonTradeswomenInc
[@ORTradeswomen](https://www.instagram.com/ORTradeswomen)



New! Visit the Western Resources Center for Women in Apprenticeship
*Resources for Training Providers, tradeswomen, and information
for women interested in apprenticeship*
www.WomenInApprenticeship.org

September 22, 2016

To: Portland City Council, Mayor's Office

1221 SW 4th Ave

Portland, OR 97204

CC: Procurement Staff, Water Bureau Staff

From:

Dear City Commissioners and Mayor:

My name is Tiffany Thompson and I am the Advocacy Program Manager at Oregon Tradeswomen, Inc. an organization that educates diverse women and girls about careers in the building, construction, manufacturing, utility and other trades, as well as help apprenticeship programs, employers and government agencies diversify their trades workforces. In my role at OTI, I spend a lot of time with more experienced tradeswomen and work with them to address issues they are facing in the industry. We are one way that tradeswomen's voices are shared in the community and I am honored to share their stories.

We are part of a broad coalition of community partners who are working together to address the complex issues that have resulted in disparate impacts for communities of color, those with low-incomes, renters, workers, and minority- and women-owned small businesses. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development. We are very concerned with the way in which the City of Portland has handled the Community Benefits Agreement (CBA) pilot results and the intended next steps.

We are writing today to encourage you to *vote against* accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic and a) does not accurately describe the success and lessons learned from the CBA pilots and b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

There are numerous issues with the document and proposed next steps, including:

- Excluding any PLA language
- Capping any community investment to 1% of project costs
- Naming the "Community Equity and Inclusion Plan (CEIP)" as the go-forward template, to be used by all Bureaus going forward. This template is currently in early draft form and has had

zero community input, instead has been written by internal City staff and legal. It is planned to go before City Council in December 2016

- Explicitly calling out not using CBAs
- Stating that the City will only apply the “CEIP” to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any Oversight committee to an advisory role going forward

While many aspects of the CBA are important to OTI, to tradeswomen, and to myself, I want to focus on the Oversight committee. Serving on the Oversight committee allowed OTI to respond to issues in real time- training students in accordance with the project and also addressing other issues that arose directly with the contractors. In particular, I found that the Oversight committee and our collaboration with the City Staff and the Primary Contractor, deepened relationships in many ways. In particular, this group began to talk about the issue of retention for diverse tradeswomen to journeylevel and beyond. The group recognized that a hostile workplace culture, throughout the industry, was one large reason that diverse workers were leaving construction. In January 2015, we were able to hold focus groups about hostile workplace culture – with members of the Oversight Committee and many workers throughout the industry. Now, OTI is one of several partners working on a project to create cultural change and increase the retention of these diverse workers.

Without the Oversight committee, we would not have been able to create innovative solutions to issues and patterns we see within the industry. OTI would not have been as effective at brining tradeswomen voices to the table. If the Oversight committee were only an advisory committee, many of our achievements would not have been possible. It is only through having dedicated time together, shared accountability, and joint problem solving that we are able to be truly effective.

Instead of the recommendations in the staff report, we request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City’s existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

- **High road construction career pathways** that pull people out of poverty
- **A collaborative and transparent process** between the community and the City
- **Clear and explicit goal setting and data monitoring**
- **Clear engagement and commitment secured by all relevant parties**, specifically including training providers, community partners, contractors, and labor unions
- **Built-in mechanisms to support the necessary community capacity building**, not capped at 1% of project costs
- **Ongoing meaningful oversight and accountability**

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,

Tiffany Thompson

Advocacy Program Manager

Oregon Tradeswomen, Inc.

Moore-Love, Karla

From: Martha Caballero <mcaballero@haciendacdc.org>
Sent: Tuesday, September 27, 2016 1:10 PM
To: Council Clerk – Testimony
Cc: Martha Caballero; Kelly Haines
Subject: CBA Written Testimony City Council presentation Sept. 28th at 2:45pm
Attachments: Agenda Item #1088 Written Testimony from Hacienda Community Development Corporation.pdf

Dear City Council,

Please see the attached testimony to consider towards Agenda Item #1088. This agenda item is critical to the growth and equity for Portland Metro. We support and work towards:

- **High road construction career pathways** that pull people out of poverty
- **A collaborative and transparent process** between the community and the City
- **Clear and explicit goal setting and data monitoring**
- **Clear engagement and commitment secured by all relevant parties**, specifically including training providers, community partners, contractors, and labor unions
- **Built-in mechanisms to support the necessary community capacity building**, not capped at 1% of project costs
- **Ongoing meaningful oversight and accountability**

Martha Caballero
Human Resources/Office Manager
"Inclusive Leaders, Build Inclusive Cultures"
(503) 961-6416
(503) 595-2116 Fax
HaciendaCDC.org
¡Una Comunidad viva!



COMMUNITY DEVELOPMENT CORPORATION

An Equal Opportunity / Affirmative Action Employer

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Corporate Office

6700 NE Killingsworth
Portland OR 97218
Ph: 503.595.2111
Fax: 503.595.2116
www.haciendacdc.org

Portland Mercado

7238 SE Foster St
Portland OR 97206
Ph: 503.897.0884
www.portlandmercado.org

September 22, 2016

To: Portland City Council, Mayor's Office
1221 SW 4th Ave
Portland, OR 97204

CC: Procurement Staff, Water Bureau Staff

From: Martha Caballero, Human Resources
Hacienda Community Development Corporation
6700 NE Killingsworth Avenue
Portland, Oregon 972518

Dear City Commissioners and Mayor:

Hacienda CDC is a Latino Community Development Corporation that strengthens families by providing affordable housing, homeownership support, economic advancement and educational opportunities.

We are part of a broad coalition of community partners who are working together to address the complex issues that have resulted in disparate impacts for communities of color, those with low-incomes, renters, workers, and minority- and women-owned small businesses. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development. We are very concerned with the way in which the City of Portland has handled the Community Benefits Agreement (CBA) pilot results and the intended next steps.

We are writing today to encourage you to vote against accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic and a) does not accurately describe the success and lessons learned from the CBA pilots and b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

There are numerous issues with the document and proposed next steps, including:

- Excluding any PLA language
- Capping any community investment to 1% of project costs
- Naming the "Community Equity and Inclusion Plan (CEIP)" as the go-forward template, to be used by all Bureaus going forward. This template is currently in early draft form and has had zero community input, instead has been written by internal City staff and legal. It is planned to go before City Council in December 2016
- Explicitly calling out not using CBAs
- Stating that the City will only apply the "CEIP" to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any Oversight committee to an advisory role going forward

Hacienda CDC was formed in 1992 in response to the declining standard of living among Hispanic immigrants in Portland's lower-income communities. Since then Hacienda has built housing communities on four vacant lots and renovated one run-down apartment complex – a former hotbed of drug activity and prostitution – in the Cully neighborhood, creating 325 units of community-



centered affordable rental housing. Hacienda has also developed communities in North Portland and a farm worker development in Molalla, OR for a grand total of 381 housing units.

Instead, we request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City's existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

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- Ongoing meaningful oversight and accountability

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,

Martha Caballero

Human Resources

mcaballero@haciendacdc.org



Moore-Love, Karla

From: Jon Jensen <Jon@ibew48.com>
Sent: Wednesday, September 28, 2016 2:47 PM
To: Council Clerk – Testimony
Subject: Agenda item #1088

Dear Commission:

Sorry I was unable to attend and offer testimony. I am writing on behalf of IBEW Local 48. I appreciated Commissioner Fish prefacing the meeting last week by saying there was nothing actionable in accepting the report. I did still want to make mention that I took slight exception to what appeared to me a strangely out of place (one of the few) reference to unions being irrelevant here because we don't experience east-coast style labor disruptions. It would seem more appropriate to mention the fact that in recent years in Portland, Union density equals diversity...

Jon Jensen
IBEW Local 48
971-303-7726

Jon Jensen
IBEW Local 48
971-303-7726

Jon Jensen
IBEW Local 48
971-303-7726

Moore-Love, Karla

From: Amy James Neel <amy@tradeswomen.net>
Sent: Wednesday, September 28, 2016 2:18 PM
To: Council Clerk – Testimony
Subject: : agenda item #1088 written testimony
Attachments: City Council CBA.docx

Hello,

Sadly, I cannot attend to provide my testimony in person. Attached is my version of the testimony I hoped to present last week.

Best regards,

Amy James Neel
Construction Manager, Job Developer

Oregon Tradeswomen, Inc.
3934 NE Martin Luther King Jr. Blvd. #101
Portland OR 97212

e: amy@tradeswomen.net
p: 503.335.8200 x 34
f: 503.249.0445
www.tradeswomen.net
www.facebook.com/OregonTradeswomenInc
[@ORTradeswomen](#)



New! Visit the Western Resources Center for Women in Apprenticeship
*Resources for Training Providers, tradeswomen, and information
for women interested in apprenticeship*
www.WomenInApprenticeship.org

Amy James Neel – Construction Manager and Job Developer at Oregon Tradeswomen, Inc Pre-Apprenticeship

Carpenter by trade

I'm here to speak in favor of the Community Benefit Agreement. I believe that CBA's are critical for ensuring that everyone in our community has equal access to the high-wage, high-skill jobs associated with public construction projects.

As both a carpenter and in my work as the job developer with Oregon Tradeswomen, I am intimately familiar with the preconceptions some Contractors hold about the capability of women in construction. There are stubborn misconceptions perpetuated by generations that have defined the construction worker as being only one type of person: a white male. Those of us who work in the industry know this to be eye-rollingingly outdated. If these misconceptions were just quaint anachronisms, that'd be one thing. The fact is, we know that without CBA's, these misconceptions translate into locking women out of jobs that they want, and that they deserve. The fact is, women don't gain equal access to this work unless intentional goal-setting is in play.

If Portland is committed to ensuring that all of its residents who want this work, and are qualified for this work have ACCESS to this work, the CBA needs to remain an equalizing option. Without intentional goal setting in place, we know that contractors tend to fall into the old habit of hiring crews that do not reflect the (gender and racial) diversity of Portland. My hope is that we reward Contractors who understand the tremendous value of diversity, both in the broadened perspective it brings to the work and the larger economic impact on our community as a whole.

The myth that women do not want this work is exposed by the many examples of projects that have actively recruited women. Those examples of leadership have given women the access to work—and that experience has grown their skillset, their incomes, and their ability to advance into a leadership position on the crew. This is how we grow diversity in the industry. We give women the opportunity, they advance, they lead. Then they become business owners. We know from 40 years of tracking the numbers of women in the industry that diversity DOES NOT happen by itself. There are too many complex, exclusionary systems in place. The cycle of habitually hiring non-diverse workers is broken by the CBA. The opportunity gives marginalized, skilled, eager, diverse workers the chance to prove their grit and grow their skills. This is economic mobility for all Portlanders. This is an investment in human capital: our greatest asset.

Now is not the time to place more barriers in front of women and people of color looking to enter this field. It is imperative that we support their desire to have equal access to these living wage jobs, which (on average) are more than triple the Federal minimum wage. My students train hard, they work hard, and they know they will be scrutinized more closely than ANY of their male co-workers. Yet they still want this work. And they want to hear that you want to open doors for them, and allow them the chance to prove themselves and build a living wage career.

I needed opportunity when I was a young carpenter coming up. I understand the struggle to gain valuable skills from a very personal level, and now (after having been given opportunity) I'm in a position to speak on behalf of the hundreds of women that are now seeking those same chances to learn. Don't expect lack of diversity to self-correct. It is intentional work. CBA's allow marginalized folks to get a foothold into a stubbornly exclusive industry. Let's continue to benefit from their good work in our community.

(I'm missing pointing out that MWESB firms do NOT necessarily contribute to diversity in the field)

Amy James Neel – Construction Manager and Job Developer at Oregon Tradeswomen, Inc Pre-Apprenticeship

Carpenter by trade

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(I'm missing pointing out that MWESB firms do NOT necessarily contribute to diversity in the field)

Moore-Love, Karla

From: Kelly Haines <khaines@worksystems.org>
Sent: Wednesday, September 28, 2016 1:42 PM
To: Council Clerk – Testimony
Subject: Written Testimony - Agenda Item 1088 on Water Bureau Report to City Council
Attachments: MAWE_Testimony 9.28.16.pdf

Greetings:

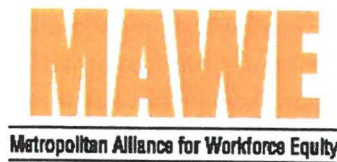
Please see attached written testimony regarding the City Council Agenda item #1088.

Best regards,

Kelly Haines
Senior Project Manager
Worksystems
1618 SW 1st Ave. Suite 450
Portland, OR 97201
p 503.478.7331



September 28, 2016



To: Portland City Council, Mayor's Office

1221 SW 4th Ave

Portland, OR 97204

CC: Procurement Staff, Water Bureau Staff

From: Metropolitan Alliance for Workforce Equity

Dear City Commissioners and Mayor:

We are the Metropolitan Alliance for Workforce Equity (MAWE), a historic partnership between the Carpenters, Operating Engineers, Laborers, businesses, pre-apprenticeship programs, and community-based organizations. MAWE works to promote economic opportunity and equity in workforce and contracting, and develop practical strategies to address historic inequities. To support Portland's equity policies and provide a strong tool to implement the policies, these partners developed the Community Benefits Agreement (CBA) to create a framework for shared community oversight and accountability, fair labor standards, and goals and resources to increase contracting and workforce opportunities for historically underserved community members.

The goals of MAWE are to:

- Support the creation of good quality construction jobs and contracting opportunities in the Portland Metro area.
- Specifically connect these jobs and opportunities to historically underrepresented populations, including people of color and women.
- Sustain and grow the training and community infrastructure with resources in order to address the regional need for a trained, qualified, and diverse construction workforce and contractor pool.
- Work with partners, contractors and public owners to replicate best practices on construction projects to accomplish workforce and contracting equity.

We are part of a broad coalition of community partners who are working together to address the complex issues that have resulted in disparate impacts for communities of color, those with low-incomes, renters, workers, and minority- and women-owned small businesses. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development. We are very concerned with the way in which the City of Portland has handled the Community Benefits Agreement (CBA) pilot results and the intended next steps.

We are writing today to encourage you to *vote against* accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic and a) does not accurately describe the success and lessons learned from the CBA pilots and b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

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- Stating that the City will only apply the "CEIP" to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any Oversight committee to an advisory role going forward

To be clear, we are very concerned about the level of missed opportunities on City capital projects, and how this staff report, if passed, could perpetuate these trends and result in more business as usual.

Here are a couple of real time examples:

- In March, we engaged in the community engagement process on the Portland Building. The city was soliciting community input and we engaged, submitting a letter with recommendations on how to best ensure the utilization outcomes that we saw on the CBA projects (attached). This letter was signed **by over 26 organizations from the Portland region from community to labor**, representing literally thousands of voters. We got *next to no response* and the Portland Building is forging ahead ignoring those recommendations, which were merely reflecting what we know are the elements that made the CBAs work so well. The letter was not even posted on the City's website along with other community input, as though it was never received.
- In the Spring, key stakeholders engaged in good faith with City staff on the Washington Park Reservoir Project Community Benefits Plan (CBP), as Commissioner Fish had described at length last week. It was a positive process, but to clarify once again, we specifically voiced concerns about how this Plan also excluded the key elements that both CBA pilot evaluations found (Frameworks and the LMCOC's) as critical for success. We submitted into written testimony on May 25th during the Washington Park Reservoir presentation a letter outlining our concerns (attached).

Council: We have not changed our tune. We will continue to outline and advocate, collectively, for the elements we see as critical for success and want to work with you to replicate these results on future projects. **Attached is a list of nearly 20 organizations you have already heard from on this issue with public testimony.** We are concerned with the staff report that you are being asked to accept because it does not reflect those lessons learned or describe /list those elements. Instead, it makes explicit policy recommendations that will move all of us in the wrong direction, and not build upon the goodwill and hard work of community and labor. This could further contribute to MORE missed opportunities on capital projects, further perpetuating the lack of utilization and preventing women and people of color in our community from accessing good paying, quality jobs in the region. We can do better.

We encourage you to please vote no on accepting this staff report and recommendations as written. Let's work together to move in the right direction.

We request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City's existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

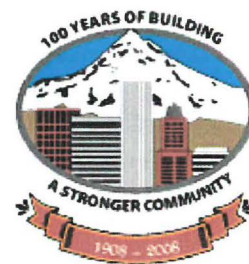
- **High road construction career pathways** that pull people out of poverty
- **A collaborative and transparent process** between the community and the City
- **Clear and explicit goal setting and data monitoring**
- **Clear engagement and commitment secured by all relevant parties**, specifically including training providers, community partners, contractors, and labor unions
- **Built-in mechanisms to support the necessary community capacity building**, not capped at 1% of project costs
- **Ongoing meaningful oversight and accountability**

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,

MAWE

Organizations who support the CBA model and reject the CBA pilot staff report



To: Fred Miller

March 28, 2016

Chief Administrative Officer, City of Portland

Office of Management and Finance

1120 SW 5th Avenue, Room 1250

Portland OR 97204

CC: Portland City Council, Mayor's office, Procurement staff

From: Metropolitan Alliance for Workforce Equity (MAWE) and Community Partners

Dear Mr. Miller,

Thank you for convening and hosting the series of community engagement meetings on March 14th and March 16th regarding the opportunity for community investment with the Portland Building renovation project. In response to the City's request for input during those public meetings, a broad group of stakeholders hereby submits this letter with key recommendations. As a broad coalition of community partners we are working together to address the complex issues that have resulted in disparate impacts for communities of color, those with low-incomes, renters, workers, and minority- and women-owned small businesses. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development.

The Portland Building renovation project has historic significance and provides an opportunity for the City to demonstrate its commitment to better government in partnership with the community. This large scale construction project has the potential to positively impact community and equity efforts, and including community partners early on in the decision-making process is critical for this potential to be realized. We appreciate your efforts to hold the aforementioned public meetings, however the content of the meetings did not indicate the City welcomed deep community input, as most questions were not answered, and community partners were given little framing for the funds and how the community input would inform future fund allocations.

We, the signed leaders and organizations, request that the City achieve equitable outcomes for diverse community members by holding this development to a high standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City's existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

- Development through a collaborative and transparent process between the City and the community
- Clear and explicit goal setting, for example: clearly tracking the diversity of the workforce at the apprentice and journey level, and by trade, to accurately measure the economic opportunities being created and for whom
- Built-in mechanisms to support the necessary capacity building in MWBE/DBE contracting and diversifying the workforce pipeline to achieve the stated goals
- Ongoing meaningful oversight and accountability of project goals through a Community-Labor-Management Committee

We also believe that the 1% of hard construction costs dedicated to community opportunities and enhancements should be better defined to ensure the funds support measurable and equitable outcomes. While the funds represent a significant investment, they are likely not adequate to support a wide range of community benefits. With that said, the City, in partnership with the community, can build the precedent for a true partnership in decision-making, transparency, and accountability for future projects.

We recommend the City consider aligning the 1% of hard construction costs more closely with the construction project itself. Proactive planning with City, community groups, labor, contractors and workers will help to leverage these funds to achieve the project's contracting and workforce equity goals. Please consider utilizing these funds to support activities that connect historically underrepresented populations with economic opportunities in the construction trades, including:

- Support screening and recruitment of interested and qualified jobseekers into the trades
- Support pre-apprentice cohorts to gain the skills needed to enter the trades
- Fund needed credentials, equipment and other tools to enable jobseekers to be more competitive in the construction trades, including driver's licenses, work boots, bus passes, etc.
- Coordinate technical assistance that is responsive to D/M/WBE contractor needs, so they can be competitive when they bid on this and other public projects
- Support broader community benefits that are closely related to the Portland Building renovation project, such as connecting workforce and economic opportunities to initiatives being led by members of the Coalition of Communities of Color and other current community efforts

While we support investment in broader community benefits and believe these activities should be supported, 1% in hard construction costs is likely not adequate to support all of the following activities, and thus should not be used to:

- Fund tenant support during the project, as this will be a significant cost that should be adequately supported by the existing relocation budget for all tenants of the Portland Building
- Fund activities that support equity in design professionals, unless the funds have a clear connection to related equity goals and oversight
- Arbitrarily compensate some community organizations and not others without clear and transparent methodology re: the City's fund allocation decision making process and clear success measures

We believe that this is an incredible opportunity to create significant and positive community impact throughout the entire \$195 M Portland Building renovation project, and implement a 1% fund that is closely connected to project processes and goals. The City already has an effective tool in the Community Benefits Agreement (CBA), which the City could use immediately to align project activities with the insight and resources of community stakeholders. The CBA was approved by City Council in September 2012 (Resolution 36954), and has achieved excellent results to date. By applying the CBA to this project, the City could ensure the project is structured to enhance City-community partnerships, and realize tangible community benefits for all Portlanders. We are concerned that the City is missing an opportunity to set a high standard in partnership with the community. Instead of recreating the wheel, we recommend you seriously consider applying a modified CBA to the Portland Building renovation project.

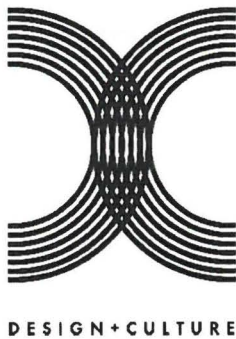
Thank you again for the opportunity to provide input and recommendations. We hope the City will sincerely consider our recommendations, and delay selecting a "Design-Build-Relocate" contractor for the Portland Building renovation project until you have included proactive community input and transparency wherever possible. Please ensure the community has an opportunity to be heard, and send us your response before moving forward with your RFP process (anticipated for April 1st). We appreciate your consideration, and look forward to working together to build a shared vision for the historic Portland Building renovation project and its community investments.

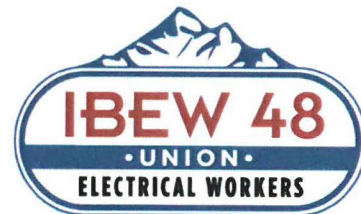
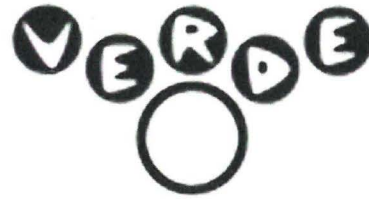
Best regards,

MAWE and Community Partners









To: Portland City Council

May 25, 2016

1221 SW 4th Ave, Portland, OR 97204

CC: Portland Water Bureau, Procurement staff

From: Metropolitan Alliance for Workforce Equity (MAWE) and Community Partners

Dear Portland City Council,

Thank you for engaging in a positive and productive process with MAWE and our partners regarding the development of a Community Benefits Plan (CBP) on the Washington Park Reservoir Improvement Project. The overall experience built trust and goodwill. We are interested in continuing to partner with the City along those lines to develop a meaningful template that includes all necessary components in the future. We are happy to continue to work toward that end.

Although the process was positive, we still have serious concerns about the ability of the CBP to achieve the stated equity and diversity goals, because it lacks the key mechanisms and delivery tools for success. Namely, a signatory component with all partners, including and especially labor unions, in order to be successful. We believe that, without this key mechanism, the policy will struggle to deliver real impact for the community. We do applaud the Water Bureau and staff on engaging and improving the Plan as much as they saw was possible with their perceived constraints, but we do not support it as written because without some critical components, we don't see it able to hit the same or better outcomes that the Community Benefits Agreement (CBA) pilot projects were able to accomplish.

We believe that building upon the success of the CBA pilots is a good way to go, and are happy to continue to work with the City as this project develops to course correct as needed and provide input and recommendations.

As your own CBA evaluation found:

- (pg. 1, pg. 20, and pp. 31-32) Union engagement is critical to achieve the equity and diversity goals set forth.
- (pg. 1) The CBA creates a mechanism for holding contractors, subcontractors and stakeholders accountable for goals and active compliance monitoring.

We, the signed leaders and organizations, request that the City achieve equitable outcomes for diverse community members by holding this development to a high standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City's existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success.

We recommend the City consider aligning the 1% of hard construction costs more closely with the construction project itself. Proactive planning with City, community groups, labor, contractors and workers will help to leverage these funds to achieve the project's contracting and workforce equity goals. Please consider utilizing these funds to support activities that connect historically underrepresented populations with economic opportunities in the construction trades, including:

- Support screening and recruitment of interested and qualified jobseekers into the trades
- Support pre-apprentice cohorts to gain the skills needed to enter the trades
- Fund needed credentials, equipment and other tools to enable jobseekers to be more competitive in the construction trades, including driver's licenses, work boots, bus passes, etc.
- Coordinate technical assistance that is responsive to D/M/WBE contractor needs, so they can be competitive when they bid on this and other public projects
- Support broader community benefits that are closely related to the project, such as connecting workforce and economic opportunities to initiatives being led by members of the Coalition of Communities of Color and other current community efforts

The City already has an effective tool in the Community Benefits Agreement (CBA), which the City could use immediately to align project activities with the insight and resources of community stakeholders. The CBA was approved by City Council in September 2012 (Resolution 36954), and has achieved excellent results to date, as the recent CBA Evaluation found:

Exhibit C.1 – CBA Pilot Project Performance against Goals

	Goal	Interstate	Kelly Butte
% of apprentice work hours - minority	18%	38.1%	50.3%
% of apprentice work hours – women	9%	33.7%	28.2%
% of journey work hours – minority	18%	21.9%	28.9%
% of journey work hours - women	9%	3.4%	6.2%
% of hard construction costs to M/W/DBE/ESB firms	22%	37.4%	22.2%
% hard construction costs to M/W/DBE firms	12%	33.4%	21.8%
% of covered work hours filled by registered apprentices	20%	21.2%	22.6%
% of employers' workforce hired from areas designated by the Federal Small Business Administration as Historically Underutilized Business Zones ("HUBZones") within the Portland Metropolitan Area	10%	13.1% ⁹	12.4% ¹⁰

(CBA Pilot Evaluation, Framework LLC, 5/9/16, pg. 19)

By applying the CBA to this project, the City could ensure the project is structured to enhance City-community partnerships, and realize tangible community benefits for all Portlanders. We are concerned that the City is missing an opportunity to set a high standard in partnership with the community. Instead

of recreating the wheel, we recommend you seriously consider applying a modified CBA to the Washington Park Reservoir project.

Thank you again for the opportunity to provide input and recommendations. We look forward to continued work together.

Best regards,

MAWE and Community Partners



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LeRoy W. Wilder
Retired

September 28, 2016

VIA EMAIL

Mayor Charlie Hales and Portland City Council
1221 SW 4th Avenue, Room 340
Portland, OR 97204

Re: Community Benefits Agreement Report to Council

Dear Mayor Hales and Commissioners Fritz, Novick, Saltzman, and Fish,

I write today on behalf of the Metropolitan Alliance for Workforce Equity ("MAWE") and the Pacific Northwest Regional Council of Carpenters ("Council") to urge you to vote no on the Water Bureau's report regarding the pilot Community Benefits Agreements ("CBAs") on the Kelly Butte and Interstate projects and to reject the Bureau's recommendations contained in that report. Make no mistake, not only does this report distort the true success story of the CBAs, its recommendations are the first step in undoing that success and returning the City to the *status quo*. As the Equitable Contracting and Purchasing Commission ("ECPC") reported, the City's equity efforts outside the CBA have proven to be ineffective to the task of overcoming the appalling history of discrimination on the City's construction projects. I write to address a number of issues that have been raised about components of the CBA that are widely recognized as best practices – even by the City's independent evaluation – but which the Water Bureau report recommends abandoning without justification.

First, we have heard concerns that state law prohibits the City from entering into a signatory agreement such as the CBA with the unions because such an agreement would be favoring unions. That is not true. The State's labor relations laws do not stand in the way of such an agreement; governmental entities such as the City are specifically exempted from the labor relation statutes. ORS 663.005(4)(b). And the Public Employee law's prohibition on governmental influence of its employees' and subcontractors' decisions regarding union participation and representation also does not limit the City's ability to enter into a future CBA. By its terms, that law only applies to unions that represent "employees in their employment relations with *public employers*." ORS 243.650(13) (emphasis added). In other words, it only applies to unions representing *City employees*, not those representing the tradespeople employed by a contractor for the City. In addition, ORS 243.670 specifically exempts any activities carried on by the City in "negotiating, entering into or carrying out *an agreement with a labor organization*." ORS 243.670(4)(d) (emphasis added). Far from creating a legal liability, an

agreement with the signatory unions would actually further insulate the City from potential litigation.

Plainly, the use of a signatory document is squarely within the City's discretion, as demonstrated by Multnomah County's use of a signatory Project Labor Agreement ("PLA") on the new Courthouse. As a matter of policy, the signatory aspect of the CBAs makes them mutually enforceable, binding agreements. As such, the CBA model is a far more powerful enforcement tool, which is highlighted by the unprecedented success of the pilots in meeting their diversity goals. The accountability, contractor commitment, and union engagement that a signatory agreement fosters were recognized by the City's independent evaluation as an important component of the CBAs' success. It is why the signatory aspect is recognized by the academic research as a best practice. And it is why it is impossible to understand the Water Bureau's recommendation to abandon it.

Next, Commissioner Fish stated that the diversity goals on the Washington Park Community Benefits Plan ("CBP") are more aggressive than those on the CBA and thus the CBP model should be embraced. However, while the percentage goals are numerically higher, those workforce and contracting goals are aspirational and only require good faith and reasonable efforts. Again, this is precisely the type of unenforceable provision that has led to the abysmal results in the City's other diversity efforts, such as the Good Faith Efforts program, which has resulted in little more than efforts. Importantly, the very failure of the Good Faith Efforts program demonstrated by the ECPC report and the City's own data on the lack of diversity despite such efforts is a precondition to imposing both binding goals and race and gender conscious goals. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 507-08 (1989); *United States v. Paradise*, 480 U.S. 149, 171-77 (1987). In other words, the evidence unveiled by the ECPC and presented to Council paves the way for implementing the hard – rather than aspirational – goals and race and gender specific tools that are plainly needed to overcome the continuing reality of race and gender disparity on the City's construction jobs.

One of the most troubling aspects of the Water Bureau report is that it recommends eliminating CBAs from any future projects and replacing them with the Community Equity and Inclusion Plan ("CEIP"), a plan that has not even been presented to Council. The CEIP was drafted entirely without any input from the community. Not coincidentally, it eliminates many of the tools that even the City's independent evaluation recognized as best practices coming out of the CBAs. Important among those tools is genuine oversight authority for a community oversight group such as the Labor Management Community Oversight Committee ("LMCOC"). The remote oversight that has been implemented on the City's other diversity efforts, including most recently the Washington Park CBP, has been shown not to work. However, if the recommendations in this report are accepted, that remote oversight authority will be the model to which the City returns. As the ECPC's presentation two weeks ago plainly demonstrated, such remote oversight has failed to create any significant or lasting change in the contracting and hiring practices on City projects.

In addition, the Water Bureau report recommends that equity programs, even the CEIP, only be applied to alternative contracting projects such as the CMGC model, which account for the smallest proportion – approximately 5% – of the City's construction contracts. The CBA is not so limited, and there is no justification for such a limit. The state's public contracting laws do not require it. The Public Contracting low-bid statute requires the City to award low-bid contracts to the "lowest *responsible* bidder." ORS 279C.375(1) (emphasis added). In order to qualify as the "lowest responsible bidder," a contractor must demonstrate that it has the ability to "meet *all* contractual terms." ORS 279C.375(3)(b)(A). If a CBA is part of the contractual terms, then a contractor seeking a low-bid award must establish its ability to meet its terms. As the Washington Supreme Court recognized in interpreting its similar low-bid public contracting law, the concept of "responsible bidder" contains the "legislative intent" that "the social responsibility of the contractor should also be a concern." *S.W. Washington Chapter, Nat. Elec. Contractors v. Pierce County*, 100 Wash. 2d 109, 115-16, 667 P.2d 1092 (1993). There is also nothing preventing the City from using the alternative contracting model for all of its construction contracts. In either event, the Water Bureau's recommendation that the City use its existing equity efforts to the majority of its construction contracts is again contraindicated by the ECPC's factual findings showing that those programs are not working.

Finally, I would like to remind the Council of the supporters of the CBA model who have spoken out against the Water Bureau's report as written and its misguided recommendations. They include the following organizations and individuals:

- Urban League of Portland
- Pacific Northwest Regional Council of Carpenters
- IBEW Local 48
- Constructing Hope
- Oregon Tradeswomen
- Portland YouthBuilders
- Laborers Local 737
- Columbia Pacific Building Trades
- SEIU Local 49
- Coalition of Communities of Color
- Hacienda CDC
- Rose CDC
- APANO
- Jade District
- East Portland Action Plan (EPAP)
- Metropolitan Alliance for Common Good (MACG)
- Division Midway Alliance
- Danielle Marcial, City of Portland Water Bureau utility worker, Liuna member
- Roberta Hunte, PSU professor and filmmaker (Sista in the Brotherhood)
- Dawn Jones-Redstone, Carpenter and filmmaker (Sista in the Brotherhood)

Mayor Charlie Hales and
Portland City Council
September 28, 2016
Page 4

In closing, I again urge you Mayor Hales and City Commissioners to vote to reject the Water Bureau's report as written. It ignores the important historic successes of the CBA and the lessons learned from the pilots, and its recommendations would take the City backwards in its equity efforts.

Very truly yours,

Matt Malmsheimer

MEM/akt



Bill Kowalczyk
Portland YouthBuilders

Portland City Council Testimony for MAWE: 9/22/16

Good afternoon Commissioners and Mayor Hales.

My Name is Bill Kowalczyk.

I'm 63. I was a non-union carpenter for 25 years and I worked at Portland YouthBuilders for 15 years as the construction manager and currently as a construction specialist. At PYB I managed our BOLI Certified pre-apprenticeship training program for low income, diverse youth 17-24 years old.

I want to discuss the historic nature of LMCOC and its roots in MAWE (Metropolitan Alliance for Workforce Equity).

- THE LMCOC is an historic governance structure of partnership between the City and the Community. (LABOR MANAGEMENT COMMUNITY OVERSIGHT COMMITTEE)
 - Please note the broad representation of MAWE partners who signed the COMMUNITY BENEFITS AGREEMENT.
 - Bear in mind that these folks representing diverse sectors had significant differences to overcome
 - Two formative experiences contributed to the vision of the LMCOC structure: The committees reviewing equity at the South Waterfront and that reviewing participation in the Edith Green-Wendell Wyatt Federal Project
 - Four years were spent building the MAWE coalition
 - We had to overcome a lot of divisions.
 - Construction unions are institutions that have a history of exclusionary culture like most American institutions. Some folks advocate abandoning these institutions. Others fight to change them. Union organizations coming to the MAWE table to implement INCLUSION is a reflection of the internal fight to change the paradigm. It's not done. Many participants in MAWE are part of this fight.
 - For generations, the white construction family has been the primary source of new apprentices prepared for construction.
 - NOW, Pre-Apprenticeship Training Programs are a main avenue for delivering well prepared people of color, women and disadvantaged whites to apprenticeship programs. 15 years ago, we were not taken seriously. Today our programs are recognized as central to this effort.
 - With this history of change, union apprenticeship now provides 77% of the combined minority and women apprentices available today.

- Bringing this disparate group of community and labor folks together with city staff and contractor representatives into the LMCOC is a historic innovation. It reflects a wealth of social, technical, and political capital leveraged and united to address the nagging inequity in construction workforce and contracting.
- Unfortunately, this has become a very frustrating experience:
 - Many of you know the LMCOC got off to a bumpy start. In spite of the unanimous vote for the CBA by council, City staff appeared shocked at being thrown together with a committee of community and union folks. Leadership by Commissioner Leonard centered the LMCOC. In a meeting he convened, Leonard reminded all the participants of our mission to build equity and that we were all dedicated to excellent public works projects.
 - The LMCOC returned to the table. We started from scratch developing rules for conducting meetings, and, over time, evolved efficient systems.
 - We received monthly data collected by the city and reviewed it with the general contractor. We worked together to meet or exceed CBA worker and contracting thresholds.
 - The contractor and subs provided the demand for diverse workers. The unions and pre-apprenticeship programs helped provide the supply from alumni and current students seeking apprenticeship. The objective of the CBA was to deliver diversity to the industry not necessarily these projects.
 - The LMCOC process built relationships between industry partners paving the way for future equity efforts. Remember: this was a pilot project anticipating future projects.
 - This process which began with tension and apprehension steadily shifted to cooperation and collaboration between LMCOC members.
 - However, as months went by it became apparent that city staff were still dragging their feet.
 - There was resistance by city staff on the LMCOC to make summary reports more understandable
 - City staff made repeated comments that we were getting the same results they always got, never providing evidence
 - Enthusiasm expressed by the contractor and other representatives at successful intervention in workforce problems was not shared by city representatives
 - I and others became concerned that some city staff had a vested interest in proving their past equity work was the best that could be done
 - Our repeated attempts to arrange a report to council through voting city representatives on the LMCOC were thwarted. We were told: "Wait until the projects are complete".
 - We heard rumors from non-LMCOC staff that city officials were out to crush the CBA.
 - Fred Miller in an interview with the Willamette Week fanned phony flames of "conflict of interest" and Commissioner Fish promoted "a

different program” than the CBA. No consultation with the LMCOC. Conveniently, data such as 50% minority apprenticeship participation on Kelly Butte or 34% female apprenticeship participation on Interstate was not mentioned. Are we to believe that was just the reporter?

- We had to resort to individual meetings with commissioners and the mayor where we received mostly supportive platitudes.
- Our attempt months ago to plan for today’s report to council with LMCOC staff were first ignored then delayed to 10 days ago.
- When we finally met we were given an agenda allocating 10 minutes to our report-AFTER 4 YEARS OF WORK! Do you see how insulting that was?
- Responding, last week the date of this report was changed making it impossible for many of my students and staff to attend this council meeting.
- City Staff were apparently directed to NOT participate in this LMCOC report.
- Meantime, the city staff forged ahead shaping an equity strategy behind closed doors, without transparency and marginalizing the successes of the CBA:
 - Now, we are told City staff are presenting a new equity plan called the CEIP today, written before and without the LMCOC’s report to council-our first in four years.
- Where is the inclusion? Where is the city/citizen collaboration? Has the good will of the citizens serving on the LMCOC and our constituencies been squandered? This feels like a political game to neutralize the opposition. And city staff hold all the cards! Maybe it helps explain why 52 years after the Civil Rights Act of 1964, we are still in the implementation stage of the Civil Rights movement.
- These are my Hopes for the future
 - Equity strategy must include real collaboration with the community and labor, not tokenism, not gestures after the fact. But real inclusion, **with city support**, not subterfuge.
 - I strongly urge the council to not except the evaluation report.
 - I urge the council to include MAWE members of the LMCOC in any new equity plan. We paid our dues.
 - Finally, the problem here is institutional inertia and internal resistance to change. I heard a quote this morning:
 - “You can’t solve the problem by using the same thinking that was the source of the problem”.THANK YOU.

Hello my name is Vicqui Guevara, owner of Valley Growers Nursery & Landscape, Inc. and president of PBDG, Professional Business Development Group, which comprise of State certified minority contractors & professional businesses. PBDG's primary purposes are to:

1. Improve the business conditions in the construction industry by increasing the capacity and utilization of DMW construction and professional services contractors;
2. Link contractors to major public works and private sector opportunities - we work with all types of contractors, union and non-union.

We have over 40 members in our organization, and we had even more attend our monthly meeting on Tuesday, our bi-monthly meeting, we had over 50 people attend. Today, we are here to express our sincere thanks to the Community Benefits Agreement because it has directly benefitted some of our members and the many members of the DMW contractor community.

The CBA projects allowed contractors and A&E professionals an opportunity to work on large public projects that would have not been available before. Some of our firms had the benefit of taking part in our TA services. Through this work their capacity grew to work on bigger and better contracts. I'm speaking through my experience. Valley Growers, received an Estimating Software and Technical assistance a couple of years ago. It has improved & cut down our bidding process in half, thus saves money, which we pass on to our Clients.

Directly from these CBA projects, new relationships between large majority owned firm and DMW firms blossomed and grew. These relationships still exist today and have created long term partnerships that have transferred to many projects.

Thank you for your time.

CBA Pilot Evaluation: CAWS Response



1618 SW First Avenue, Suite 450
Portland, Oregon 97201

**PLEASE SEE ATTACHED FOR A RESPONSE FROM
CAWS OF THE FRAMEWORK CBA PILOT
EVALUATION**

Members

Gerding Edlen Development
Hoffman Construction
Howard S. Wright
Kiewit Bilfinger Berger
OHSU
Pacific Northwest Carpenters
Institute
Portland Development Commission
Walsh Construction
WorkSystems, Inc. (WSI)

Affiliate Members

Oregon Tradeswomen Inc.
IBEW Local 48

Community Partners

Portland Public Schools
Worksource Portland Metro
Constructing Hope
Portland Youth Builders

Evaluation Section	CAWS response
<p>Pg. 2: CBA governance provisions created potential for conflicts of interest: “This created the appearance of conflict of interest. Members and fund administrator CAWS were sensitive to this issue, but we could not confirm or find Conflict of Interest Statements</p>	<p>Construction Apprenticeship Workforce Solutions (CAWS) was neither in charge of the governance of the Labor Management Community Oversight Committee (LMCOC) nor a voting member.</p> <p>The City never provided any guidelines, requirements or expectations around CBA fund management, conflict of interest or records retention. Despite the lack of instruction from the City, CAWS included a conflict of interest statement on the bottom of each scoring sheet which was signed by the person scoring the RFP response. An example of the RFP scoring sheet was provided to the evaluator as part of the CBA review process. While the actual scoring sheets were not archived, all panel members would recall that scoring sheets were signed as part of the process.</p> <p>CBA Fund RFPs and RFQs were widely distributed to solicit as many qualified responses as possible. In many cases, CBA partners were the only respondents, possibly due to the highly specialized and unique nature of the work.</p>
<p>Pg. 2: Contractual relationships complicated 1% fund administration: “The City included the 1\$ funds in its contracts with Hoffman Construction, and Hoffman in turn used a Purchase Order to pass funds through to CAWS. CAWS and WSI were jointly identified in the CBA to be the recipient of a portion of the 1% funds, but are separate legal entities. CAWS contracted with WSI to manage CBA-funded recruitment and training programs, and WSI has served as the fiscal agent for CAWS for several years. The LMCOC later designated CAWS to be the administrator for all 1% funds. There was no contract or agreement between WSI/CAWS and the LMCOC for this role.”</p>	<p>What most complicated 1% fund administration was the complete lack of guidance and clarity around how these funds were expected to be managed. There was no contract, no Memorandum of Understanding or other written instructions provided to either CAWS or Worksystems that articulated program or administrative requirements.</p> <p>Worksystems was named as the administrator for the outreach and training funds in the CBA Resolution passed by the City Council. This relationship allows the City to leverage Worksystems’ unique role as coordinator of regional workforce development efforts and the resources, capabilities and relationships Worksystems brings to address workforce challenges and opportunities.</p> <p>Through an intergovernmental agreement between the City of Portland, Washington and Multnomah counties, Worksystems is designated by the Governor and local jurisdictions to oversee the public workforce system (WorkSource Portland-Metro) which serves nearly 80,000 job seekers annually. This is a universal system that must provide an array of services to all job seekers regardless of sex, race, socio-economic or other demographic characteristics.</p>

Evaluation Section	CAWS response
	<p>By including both Worksystems and CAWS in the resolution the City was able to leverage the full capacity of Worksystems and the public workforce system while maintaining a specific focus on women and people of color through its partnership with CAWS.</p> <p>CAWS contracts with Worksystems to provide administrative and financial management services. This is not an uncommon relationship especially in the not for profit world (see the Portland Business Alliance and Partners for Diversity, for example).</p>
<p>Pg. 2: CBA program administration costs were relatively high: “Costs to administer the CBA 1% programs were estimated at 17% of total program expenditures. This is higher than some City programs that also administer grants or contracts, such as the Children’s Levy. CAWS received a total of 14% to administer the CBA funds and programs. Remaining costs included program development and design, web site support, advertising, and a nominal amount to compensate members from CBOs for attendance at some meetings.”</p>	<p>Estimates of costs and comparisons to the Children’s levy are irrelevant.</p> <p>CAWS was reimbursed 17% for supporting the projects. Of that, CAWS paid Worksystems its federally approved indirect rate of 7.79%. CAWS used about 6.2% of the total to provide a variety of services – some administrative, some programmatic. The remaining funds were used for other outreach and reporting requirements, including the final program report.</p> <p>Over the course of the project CAWS provided far more services than fund administration, much of which was uncompensated. As an entirely new pilot program with little guidance, CAWS worked with the LMCOC to design and develop program strategies, engage partners and leverage services. In addition, CAWS procured for targeted services (primarily through RFP/RFQ processes), managed contracts, reviewed and reported outcome reports, and supported both the Compliance and Oversight Committees over the 3 year pilot period.</p> <p>The LMCOC researched other fund administration models and was unable to identify an alternative that would provide all of the needed services for less. The inability to identify an alternative strategy for coordination and management of the technical assistance and compliance funds slowed down fund distribution. Ultimately, the LMCOC asked CAWS to take on all three funds. All activities, services and subcontracts delivered by CAWS across the 3 funds were vetted, agreed upon and approved by the LMCOC.</p>
<p>Pg. 3: CBA 1% fund contracts were not performance-based: “contractors were not required to complete deliverables or achieve specific outcomes in order to receive payment.”</p>	<p>There was no requirement to use performance based contracts. In the absence of specificity, cost reimbursement contracts were used which is the norm for employment and training and professional service/consulting contracts. Each outreach and training contract had a performance chart and a loading chart. The Framework Evaluation Report specifically sites training, completion, placement and retention data which was reviewed, tracked and reported</p>

Evaluation Section	CAWS response
	<p>by CAWS. Contractors provided monthly progress updates with their invoices which was also reviewed by the LMCOC.</p> <p>Each Technical assistance contract had a framework for how hours could be charged, allowable areas of services, and a requirement to show a pre and post assessment of the contractor receiving services. Contractors were only reimbursed after they provided the hours of consulting or technical assistance identified in the agreement.</p>
<p>Pg. 3: Opportunities to improve the City's approach to Community Benefits: Fund administration: "Assign responsibility for administration and oversight (fund management, purchasing, contracting, contract management and compliance) and performance evaluation to the City or to a qualified contractor/organization."</p>	<p>Worksystems is a highly regulated organization with a national reputation for effective service design and delivery and uncompromised fiscal and administrative integrity. Worksystems is annually reviewed by State and federal monitors and is subject to an annual A-133 audit. Since its inception, Worksystems has successfully managed over \$350 million in federal, state and local grants and contracts. Our administrative and management services are cost effective (7.79% indirect rate), flexible and well versed in the requirements and expectations of federal, state and foundation funders.</p> <p>We are proud of our partnership with CAWS and the flexibility it provides to focus on increasing the diversity of the workforce and building opportunities for people of color and women in our community. This partnership helped design and implement the Portland CBA – however, imperfect - an idea and methodology many think is a great tool to address inequities that exist at the workforce and contractor levels.</p> <p>In the absence of written guidance, we looked to the LMCOC to provide direction. They did, and we fully complied.</p>
<p>Pg. 3: Opportunities to improve the City's approach to Community Benefits: "Include program and financial audit provisions in any agreement or plans, especially if a contract organization is used to manage the program."</p>	<p>We agree. A contract that clearly articulates the City's expectations and requirements would be a great start. Again, we are a highly regulated organization that is subject to a wide variety of annual monitoring and audit requirements.</p>
<p>Pg. 8: Fund Overview and Administration: "The CBA also designated 'WSI/CAWS' as the recipient of the Community Construction, Training, Outreach and Recruitment Funds and instructed them to advise the LMCOC on the utilization and distribution of these funds. WSI/CAWS is actually two separate</p>	<p>CAWS is a 501 (c) 3 nonprofit started in 2004 by the Governor's Office, local government agencies, regional contractors, labor organizations, Worksystems and community partners to address long standing inequities across the region's construction industry. At the end of 2008, and the start of the great recession, the CAWS Board of Directors approached Worksystems to take over fiscal administration and project support. The Board needed the support while it</p>

Evaluation Section	CAWS response
<p>organizations. Worksystems Inc. (WSI) is the agency responsible for overseeing the region's Public Workforce Investment System. It serves as the fiscal agent for CAWS. CAWS is a non-profit formed by construction industry representatives to improve the representation of women and people of color in the construction trades."</p>	<p>refocused on its mission and saw the connection to Worksystems as a way to leverage its administrative, fiscal and resource development capabilities and build stronger ties to the region's Public Workforce system.</p> <p>The Worksystems/CAWS partnership has an impressive record of securing resources, designing/building programs, training and placing people, and supporting local policies and initiatives to achieve greater equity in the trades, including: Pathways out of Poverty - Green Careers Training Project: ODOT Diversity Training: Home Forward Recruitment Support: The Diversity in Workforce Construction Committee: BOLI Projects: Clean Energy Works Portland & Oregon, and the resulting Community Workforce Agreement.</p> <p>The City reached out to Worksystems and CAWS as part of its formal response to the 2009 Disparity Study. From late 2010 through early 2011 CAWS was asked to co-chair the City of Portland's Public Workforce Committee. After approximately 6 months, the Committee developed recommendations for improving City utilization of women and people of color on city funded construction projects. The majority of the Committee's recommendations were adopted in a city resolution.</p>
<p>Pg. 8: Fund Overview and Administration: "There was no MOU or contractual agreement that formally outlined CAWS' responsibilities."</p>	<p>This is correct, there was no MOU or contract for how CAWS would manage the funds. As such, CAWS was left to "figure it out" and make recommendations to the LMCOC to move forward. Outside of a PO (maybe two) CAWS signed with Hoffman, the City never developed or communicated any formal guidance to CAWS concerning its expectations around contracting or managing the funds. Over the course of the project, CAWS presented all recommendations to the LMCOC for approval. CAWS was not a formal voting member of the LMCOC.</p> <p>In our opinion, the City appeared uninterested with the program infrastructure or distribution approach related to CBA funds. Despite this indifference, over the 3 year pilot period CAWS successfully managed 13 contracts, processed more than 115 payments, and designed and conducted 5 separate procurements for a variety of services, products and training across the 3 CBA funds. All resources, activities and transactions were accounted for and provided as requested by Framework.</p>

Evaluation Section	CAWS response
<p>Pg. 8: Fund Overview and Administration: “Both WSI and CAWS appeared to maintain appropriate financial records. Tracking of CBA funds was complicated by the fact that CAWS’ accounting software was not set up to separately account for the CBA and its three funds. Staff used spreadsheets to manually identify CBA expenditures by fund and program. We found no documented close-out process that identifies what CAWS should do with any remaining CBA funds.”</p>	<p>Appropriate financial records were maintained. All financial information requested by Framework was provided.</p> <p>CAWS processed the return of \$23,202.20 via Hoffman Construction last week.</p>
<p>Pg. 9: Fund Overview and Administration: “The relationship between Hoffman Construction and CAWS is defined in two Purchase Orders, one for each construction project. The POs request CAWS to provide program administration services for each of the three CBA funds in accordance with the CBA, establish a maximum payment amount, and provide for a fee of 14% of total funding to be paid to/retained by CAWS. The POs defer oversight of the use of the CBA funds to the LMCOC.”</p>	<p>Agreed. This constitutes the extent of the administrative and financial direction provided to CAWS/Worksystems for these projects.</p>
<p>Pg. 10: “CBA funds were leveraged in several ways...WSI provided the use of its offices for meetings.”</p>	<p>Beyond the benefits of meeting space, the relationship with Worksystems provides the City with a broad array of leverage and support. Fundamentally, this relationship allows the City to leverage Worksystems’ unique role as coordinator of regional workforce development efforts and the resources, capabilities and relationships Worksystems brings to address workforce challenges and opportunities.</p> <p>Through an intergovernmental agreement between the City of Portland, Washington and Multnomah counties, Worksystems is designated by the Governor and local elected officials to oversee the public workforce system (WorkSource Portland-Metro) which annually invests nearly \$30 million to connect about 80,000 job seekers to skill development, training and jobs in the region.</p> <p>Worksystems and its partners in the regional workforce system support literacy, work readiness, career exploration, career planning, and other services to prepare people for career track training and employment.</p>

Evaluation Section	CAWS response
	<p>In addition to preparatory investments, CAWS / Worksystems have pursued and received construction related training grants which have trained 865 people for the industry over the past 5 years. During the CBA pilot period, CAWS/Worksystems invested approximately \$400,000 into construction training for an additional estimated 180 low income and diverse individuals during the same time period. The net effect of these investments was a reduction in costs to the CBA for skill development, work readiness, training and related support.</p>
<p>Pg. 11: CBA Administrative Costs: “The cost to administer the funding provided by the CBA is estimated to 17% of the total 1% program expenditures. Admin costs included: -payment of an administrative fee of \$84,530 to CAWS for fund administration, procurement, contract development, and program coordination. -Approximately \$27,000 paid by CAWS to WSI to administer Community Construction, Training and Outreach and Recruitment contracts. -Approximately \$14,000 for a final report, marketing and web site support. -Approximately \$4,800 for some LMCOC participants to attend some of the meetings.”</p>	<p>CAWS was reimbursed 17% for supporting the projects. Of that, CAWS paid Worksystems its federally approved indirect rate of 7.79%. CAWS used about 6.2% of the total to provide a variety of services – some administrative, some programmatic. The remaining funds were used for other outreach and reporting requirements, including the final program report.</p> <p>Over the course of the project CAWS provided far more services than fund administration, much of which was uncompensated. As an entirely new pilot program with little guidance, CAWS worked with the LMCOC to design and develop program strategies, engage partners and leverage services. In addition, CAWS procured for targeted services (primarily through RFP/RFQ processes), managed contracts, reviewed and reported outcomes, and supported both the Compliance and Oversight Committees over the 3 year pilot period.</p>
<p>Pg. 13: Program/Process Analysis: “The CBA designated fund administration and related design and execution of specific 1% programs to the LMCOC and to WSI/CAWS (for the Community Construction, Training, Outreach and Recruitment Fund only). As noted earlier, the LMCOC was a volunteer organization with no designated staff support. Staff from WSI, CAWS and Emerald Cities Portland stepped in to recommend strategies, created RFPs, developed proposal evaluation tools, and evaluated programs and results.”</p>	<p>This statement acknowledges that the work undertaken by CAWS/Worksystems was far beyond traditional administrative support. For example, the LMCOC approved the final report as a service cost under the Compliance fund.</p>
<p>Pg. 15: CBA governance, management and general oversight: “LMCOC meeting minutes indicated that CAWS recommended the LMCOC seek administrative help. In the absence of action by the LMCOC, WSI/CAWS submitted a written proposal to have</p>	<p>Again, this was a lengthy conversation (over the course of several months) that included the LMCOC exploring other fund administration options and requesting ideas from all partners, including the City. In the end, Worksystems/CAWS emerged as the most viable option.</p>

Evaluation Section	CAWS response
<p>CAWS serve as the default fund administrator for the Compliance and Technical Assistance funds 'should no other suitable fund administrator be identified for either fund.' The LMCOC subsequently delegated all fund administration responsibilities to WSI/CAWS."</p>	
<p>(Page 16): CBA governance, management and general oversight: "CBA programs and strategies were designed, executed and managed by a relatively small number of individuals wearing many hats. Most LMCOC and Compliance Monitoring Subcommittee members were instrumental in the conception, design and creation of the resolution creating the Model CBA. Members played active roles in program development and contractor selection throughout completion of the pilot projects, and several were project contractors or CBA fund recipients. The CBA specifically called for making grants to community based organizations who are signatory to and supportive of the CBA. According to LMCOC meeting minutes, committee members were concerned about potential conflicts of interest related to its members' roles and relationships. We found no evidence that LMCOC, Compliance Subcommittee members, or WSI/CAWS intentionally violated City conflict of interest policies or actively participated in committee decision-making that resulted in a personal benefit. However, the LMCOC never developed or required committee members to sign a conflict of interest policy or statement. Several relationships could have been perceived as a creating a conflict of interest: CAWS managed the CBA program funds. The CAWS Board Chair is an Executive Vice President of the Interstate and Kelly Butte projects' prime contractor Hoffman Construction. F.M. Burch & Associates was under contract to provide diversity outreach and advisory services to Hoffman Construction on both pilot projects. During the same time, the firm's principal was Hoffman Construction's alternate representative to the LMCOC,</p>	<p>The City was responsible for convening the LMCOC and was charged by the City Council to implement the CBA. The City provided the resources and direction (or lack thereof) to Hoffman to support the 3 funds.</p> <p>The City's conflict of Interest Policy was never introduced or discussed. Regardless, no one intentionally or unintentionally violated any conflict of interest policies. Nobody sat on a review committee that approved a scope they were "bidding" on. There was a City representative on every review committee. Review committee members signed conflict of interest policies. LMCOC partners also recused themselves from LMCOC votes regarding anything that could benefit them.</p> <p>It is unclear how Hoffman's relationship to CAWS could be viewed as a conflict since Hoffman was required to implement the CBA after being awarded the work and after CAWS was identified by a separate resolution as part of the CBA process.</p> <p>F.M. Burch & Associates is widely considered one of the top 5 MWDBE/ESB consultants in Oregon and SW Washington. They have supported numerous large scale construction projects for TriMET, Multnomah County, the City of Portland, Home Forward and others. Its proposal was objectively reviewed and evaluated and was considered the best response.</p> <p>In its role of fund administrator and program coordinator, Worksystems completed a final report on behalf of the LCMOC – it was never intended to be an evaluation. The purpose of the report was to summarize activities, lessons learned, outcomes, etc. The Worksystems' staff member who helped to complete the report had previously been employed by Emerald Cities, however the report was initiated 6 months after the staff member left Emerald Cities, and was completed entirely under the auspices of Worksystems.</p>

Evaluation Section	CAWS response
<p>and also contracted with WSI/CAWS to serve as the Program Advisor to the Technical Assistance Fund's programs.</p> <p>Emerald Cities Portland contracted to complete a final evaluation of the CBA program (with the assistance of two outside consultants.) The same representative from Emerald Cities Portland was also directly involved in the design, management and execution of some programs subject to evaluation.</p> <p>Most of the administrative assets of the CBA project (Requests for Proposals, policies, procedures, templates and forms) were created and maintained by WSI/CAWS, are not owned by the City of Portland, and may not be available to other projects. City Procurement Services did receive copies of most of the proposals and reports.</p> <p>Project completion and transition of documents have been complicated by changes in key personnel. CAWS' CBA fund administrator left to work for Tri-Met but is assisting with the preparation of a final report and with a close-out of the CBA project. The Emerald Cities Portland representative left to work for WSI before completing Emerald Cities' final evaluation report. She is in the process of completing that report."</p>	<p>All report content has been completed, though graphic design is being finalized. All other close-out activities have been completed.</p>
<p>Pg. 17: CBA 1% Purchasing, Contracting, and Invoice Practices: "Procurements for CBA-funded services appeared to follow good practices. Requests for Proposals (RFPs) and Requests for Qualifications (RFQs) were well-constructed and included clearly defined CBA goals and program objectives. Consistent with purchasing best practices, RFPs and RFQs identified both CAWS and Emerald Cities' roles and responsibilities as fund manager and program manager respectively in the introductory narrative. Neither organization's representative signed conflict of interest statements."</p>	<p>Procurements of CBA-funded activities conducted by CAWS/Worksystems did follow good practices.</p> <p>As the owner and convener of the CBA, the responsibility for communicating specific policy, program and/or administrative expectations ultimately rests with the City.</p>

Evaluation Section	CAWS response
<p>Pg. 17: CBA 1% Purchasing, Contracting, and Invoice Practices: “LMCOC members and WSI/CAWS representatives were aware of and sensitive to potential conflicts of interests during RFP and RFQ evaluation. According to meeting minutes, Conflict of Interest statements were discussed with the LMCOC. The “CAWS CBA Evaluation Spreadsheet” used to rate and rank respondents included a statement for evaluators to sign. We could not confirm or find examples of the signed evaluation forms, but interviewees indicated that they recused themselves from volunteering to evaluate proposals submitted by their organization or from voting to approve an award their organization applied for. LMCOC meeting minutes also describe some of these recusals.”</p>	<p>The City never provided any guidelines, requirements or expectations around CBA fund management, conflict of interest or records retention. Despite the lack of instruction from the City, CAWS included a conflict of interest statement on the bottom of each scoring sheet which was signed by the person scoring the RFP response. An example of the RFP scoring sheet was provided to the evaluator as part of the CBA review process.</p>
<p>Pg. 17-18: CBA 1% Purchasing, Contracting, and Invoice Practices: “Community Construction Training Program contracts were set up for “cost-reimbursement”, similar to many grant programs. Although contracts included measurable performance objectives and a total number of participants to be served, payments were made based on actual costs incurred (personnel costs, operating costs, support services, and indirect costs.) Provider invoices did not include any information about progress against goals and payment was not dependent on successful progress against goals. Performance against objectives was reported in monthly performance reports and monitored; however payment was not contingent on performance... Invoice review and payment authorizations used WSI-prescribed procedures for documentation, review and approval. The WSI Business Manager had final authority for review and payment of invoices on behalf of WSI/CAWS. In addition, all expenditures paid from the Technical Assistance Fund were reviewed by the Technical Assistance Program Manager and Program Advisor. Payees were requested to send documentation to all three.”</p>	<p>There was no requirement to use performance based contracts. Rather, cost reimbursement contracts were used which is the norm for employment and training and professional service/consulting contracts. Each outreach and training contract had a performance chart and a loading chart. The Evaluation Report specifically sites training, completion, placement and retention data which was reviewed, tracked and reported by CAWS. Contractors provided monthly progress updates with their invoices which was also reviewed by the LMCOC.</p> <p>Each Technical assistance contract had a framework for how hours could be charged, allowable areas of services, and a requirement to show a pre and post assessment of the contractor receiving services. Contractors were only reimbursed after they provided the hours of consulting or technical assistance identified in the agreement.</p>

Evaluation Section	CAWS response

Michael A. Burch

Comments on Report to Council re: Model Community Benefits Agreement

Mr. Mayor and commissioners:

We began this particular effort over 6 yrs ago by inviting everyone in the community to help work on a plan to expand the diversity of the construction industry and workforce in the city we live in. Some of those invited accepted the opportunity to work on an inclusive plan and overcame historical divisions to do so. Others refused and attempted to derail the effort by attempting to make the work of the CBA an "us against them," "union vs non-union" debate. Much to my dismay, many of those same divisive people continue that line of argument today, in spite of the historic progress for workforce and contracting diversity made under the CBA.

Unions are a small part of the CBA community. We are only one of the many partners who agreed to work on a high road approach to the challenges of diversifying the construction industry and moving the City forward. And we are only one partner in this effort. An important partner to be sure, but as the CBA has proven, there is room for everyone under this tent, union *and* nonunion.

You've seen the data from the two water bureau projects. There were no nonunion contractors run off the job, prevented or discouraged from bidding. The majority of M/W/DBE contractors that were awarded contracts were nonunion. And the workforce diversity results on Kelly Butte and Interstate were historic.

Yet certain voices, who choose to divide rather than join in an effort that will lift up everyone in our communities, seem to carry a disproportionate weight when it comes to swaying certain decision makers. What's even more disturbing is that they seem to have help from high places, certain City officials appear to be supportive of these divisive efforts.

As the ECPC highlighted last week, the City's own tracking data clearly illustrates the poor performance of prior diversity efforts. The data we've all seen is sobering and graphic. If this report on the CBA is any indication, it appears the city is willing to ignore its own results.

Mr. Mayor, Commissioners, I am asking for leadership that unites, rather than divides, those seeking career opportunities in the trades. I am asking for leadership that will refuse to return the City to the status quo. I am asking that you vote "No" and refuse to accept the report and recommendations. Accepting this report and its recommendations as written will mean that you have turned your collective backs on the many to serve a few. Accepting this report will mean that divisive tactics for political gain have trumped the facts. Do the right thing for the many who look to you for leadership. Vote no. Thank you.

Moore-Love, Karla

From: Rev Joseph Santos-Lyons <joseph@apano.org>
Sent: Thursday, September 22, 2016 12:14 PM
To: Council Clerk – Testimony; Hales, Mayor; Commissioner Fish; steve@portlandoregon.gov; Commissioner Saltzman; Commissioner Fritz
Subject: CBA Needs Serious Work
Attachments: APANOCBAComments9.22.16.pdf

Dear Council,

Please accept APANO's letter on the CBA agenda item 1061 today.

Sincerely,
Joseph

--

Rev. Joseph Santos-Lyons, Executive Director My gender pronouns are: he/him

Asian Pacific American Network of Oregon

2788 SE 82nd Ave, Suite 203 | Portland OR 97266

O: 971-340-4861x1 | M: 503-512-0490 | www.apano.org

Upcoming APANO events:

- MicCheck! Summer Cultural Series

is a series of events, workshops, and performances highlighting the work of Asian and Pacific Islander artists and issues that impact our communities. See this year's lineup

[here](#)

Save the date! APANO's Rolling Tides Statewide Convention is on October 1st.

Join us for a day of interactive workshops, inspiring cultural performances, and a unique opportunity to build your knowledge, skills, and relationships. Check out the details [here](#).

September 22, 2016

To: Portland City Council, Mayor's Office
1221 SW 4th Ave
Portland, OR 97204

Dear Mayor Hales and Commissioners,

APANO has a deep stake in the community benefits agreement policy due to our strategic interests in equity, addressing the legacy of disinvestment in communities of color, and our increasing engagement in community and economic development activities particularly in the Jade District. We work with a broad set of stakeholders in the Asian and Pacific Islander communities, who total over 50,000 in the City of Portland, and conduct our work in multiple languages.

We are part of a broad coalition of community partners who are working together to address major public developments that have historically resulted in disparate impacts for communities of color, low-incomes, renters, workers, and minority and women-owned small businesses. APANO believes that the City of Portland needs to take a stronger, more pro-active position to ensure major deals and public investments are broadly shared, achieve equitable outcomes, and correct longstanding disparities in our communities.

We **oppose** the current Community Benefits Agreement (CBA) Pilot as written. We believe serious improvements are needed in order to meet City of Portland Equity Goals, and win our support.

Specifically:

- Adopting a formal oversight committee with decision-making authority;
- Defining community stakeholders necessary to conduct any community process for determining benefits from development, ensuring communities most impacted have a decision-making role consistent with best practices defined by the City's Public Involvement Advisory Committee;
- Establishing a community input process to finalize the draft Community Equity and Inclusion Plan (CEIP)
- Apply CEIP to the broadest range of City contracts feasible
- Remove the 1% cap on any benefits;



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- Make explicit the priority of moving people of color into higher wage jobs including union positions.

Going forward, equity requires increased transparency and a commitment to more meaningful partnership with community and labor partners. The City can and must do better to achieve the equitable outcomes and best serve our communities. Please commit a higher quality process with community and hold off on any adoption at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Santos-Lyons", with a long, sweeping horizontal line extending to the right.

Rev. Joseph Santos-Lyons
Executive Director

CC: Procurement Staff, Water Bureau Staff

Moore-Love, Karla

From: Connie Ashbrook <Connie@tradeswomen.net>
Sent: Thursday, September 22, 2016 11:44 AM
To: Council Clerk – Testimony
Subject: letter re City Council agenda item 1061
Attachments: 2016 OTI letter re Council item 1061.pdf

Dear Clerk of Council,
Please find attached my written testimony for Council item today #1061.
Thanks very much,
Connie

Connie Ashbrook
Executive Director

Oregon Tradeswomen, Inc.
3934 NE Martin Luther King Jr. Blvd. #101
Portland OR 97212

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New! Visit the Western Resources Center for Women in Apprenticeship
*Resources for Training Providers, tradeswomen, and information
for women interested in apprenticeship*
www.WomenInApprenticeship.org



September 21, 2016

Letter re: City Council agenda item 1061. "Accept evaluation of the effectiveness of the Community Benefits Agreement piloted on the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects (Report introduced by Commissioner Fish"

To: Mayor, City Commissioners

My name is Connie Ashbrook, I am the Executive Director of Oregon Tradeswomen, Inc. an organization that educates diverse women and girls about careers in the building, construction, manufacturing, utility and other trades, as well as help apprenticeship programs, employers and government agencies diversify their trades workforces. I worked in construction for 17 years, mostly as an elevator constructor before coming to lead OTI in 1996. I served on the Oregon State Apprenticeship and Training Council for 9 years and for the past 6 years on the Federal Advisory Committee on Registered Apprenticeship. Oregon Tradeswomen, Inc. has run our pre-apprenticeship program for women since 2004, and just this year graduated our 1000th student. We have had a huge impact on the number of women working in the trades in Oregon: over 7% of Oregon's apprentices are women as compared to 2.8% nationally. About 1/3 of Oregon's female apprentices and journey workers are OTI graduates.

We are part of a broad coalition of community partners who are working together to address the complex issues that have resulted in disparate impacts for communities of color, those with low-incomes, renters, workers, and minority- and women-owned small businesses. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development. We are very concerned with the way in which the City of Portland has handled the Community Benefits Agreement (CBA) pilot results and the intended next steps.

We are writing today to encourage you to *vote against* accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic and a) does not accurately describe the success and lessons learned from the CBA pilots and b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

There are numerous issues with the document and proposed next steps, including:

- Excluding any PLA language
- Capping any community investment to 1% of project costs
- Naming the "Community Equity and Inclusion Plan (CEIP)" as the go-forward template, to be used by all Bureaus going forward. This template is currently in early draft form and has had zero community input, instead has been written by internal City staff and legal. It is planned to go before City Council in December 2016
- Explicitly calling out not using CBAs
- Stating that the City will only apply the "CEIP" to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any Oversight committee to an advisory role going forward

I am here today to speak in favor of the Community Benefit Agreement, I am here on behalf of OTI as well as Constructing Hope and Portland YouthBuild, the three community pre-apprenticeship programs in the Portland

area. Thank you very much to City Council for the resources from the Community Benefit Agreement. Because of these resources, OTI was able to train 27 women to prepare them for the trades, including 24 women of color. Today three of them are working for the Portland Water Bureau as a Water Meter Reader, Water Service Apprentice and Environmental Technician. Fourteen others are working as Carpenter, Electrical, Laborer, Tree Trimmer, Lineworker and Steamfitter apprentices. Four others are working in trades related fields such as cabinet maker and electrical material handler. 21 out of 27 formerly low-income women now working in high wage, high skilled careers, thanks to your investment. And there were similar results from Constructing Hope and Portland YouthBuild, overall bringing 104 low-income and minority individuals out of poverty and into the middle class, the majority of them City of Portland residents, now having become tax payers and rate payers.

We also want to thank the City for the opportunity to sit on the LMCOC. This helped us bring the issues of a diverse workforce to greater prominence and attention on the project, to solve workforce diversity gaps in real-time, and achieve significant numbers on these projects.

I can't begin to thank you enough for the opportunity to problem-solve in real-time during our monthly meetings and make sure workforce diversity gaps were taken care of quickly. What usually happens is that the gaps are reported at the end of a project, when everyone says, oh too bad, we tried. Well, we didn't just try – together we DID IT!!

I want to dispel a few of the misconceptions that have been stated in various City documents:

At OTI, CH & PYB we pride ourselves on our integrity – on our service to the community, but also on our shepherding of the resources our funders give us to do our good work in the community. Through our professional audits, oversight from our board of directors and our reports, we provide careful stewardship of the public dollars to make sure they are used wisely and for their rightful purpose, and that outcomes are clearly reported on. Because of this value of integrity, we are offended that our integrity was questioned by the City. We carefully recused ourselves and made sure we were not part of discussion and decision-making when we stood to have resources allocated to our organizations so that we could serve the community. We signed conflict of interest statements acknowledging any potential conflict of interest.

We were at the table at the LMCOC because we are subject matter experts, the only ones locally providing this valuable service to the community and construction industry. Our expertise was needed, valued and effective. A complaint has been made that few of the trainees funded by the CBA worked on the Water Bureau projects, but we always knew we would be preparing for the future, building the pipeline of workers to be more robust so that they would be available for future City projects. And the CBA projects benefitted from our past work. *A full 40% of the women who worked on Interstate and Kelly Butte were graduates of our pre-apprenticeship program.*

We properly made a competitive bid on the dollars available. WSI proposals and reporting documents, contrary to what has been said, are detailed and rigorous. Our organizations were selected because we had the needed expertise and capabilities.

We agree that this was a pilot that roles needed to be clarified, that a more formal structure needed to be developed, and that City staff struggled with the demands on their time. We agree that examining and learning from the best practices and transparency of data of Seattle, Boston and other communities would strengthen the City's workforce program.

Unfortunately, the reports give the impression that the City of Portland does not care about workforce equity on their public projects.

We heard that the City is working on a new plan – thank you for keeping trying. Our concern is that any plan needs to include greater efforts towards workforce diversity, not just MWESB diversity. Today's construction workers are the business owners of the future. Unless diverse men and women get to become apprentices, become journey-level, have opportunities to move into supervisory roles, we will not have a robust & diverse contractor pool.

Please support the CBA and do not approve the City staffs' report.

Instead, we request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City's existing efforts and project goals regarding utilization of disadvantaged, minority, women and emerging small businesses (D/M/WBE and ESB), as well as the workforce diversity goals, are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

- **High road construction career pathways** that pull people out of poverty
- **A collaborative and transparent process** between the community and the City
- **Clear and explicit goal setting and data monitoring**
- **Clear engagement and commitment secured by all relevant parties**, specifically including training providers, community partners, contractors, and labor unions
- **Built-in mechanisms to support the necessary community capacity building**, not capped at 1% of project costs
- **Ongoing meaningful oversight and accountability**

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,



Connie Ashbrook

Executive Director

connie@tradeswomen.net

503-335-8200 x 22

Moore-Love, Karla

From: Lori Boisen <divisionmidwayalliance@gmail.com>
Sent: Thursday, September 22, 2016 9:35 AM
To: Hales, Mayor; Commissioner Fritz; Commissioner Fish; Novick, Steve; Council Clerk –
Testimony; Commissioner Saltzman
Subject: Approve Community Benefits Agreements
Attachments: CBA Letter to Council_9-22-16.docx

Please accept the following into as testimony regarding today's Community Benefits Agreement discussion:

September 22, 2016

Honorable Charles Hales

Honorable City of Portland Commissioners

1221 SW 4th Ave.

Portland, OR 97204

Dear Mayor Hales and Commissioners,

Division Midway Alliance (DMA) is one of six Neighborhood Prosperity Initiatives (NPIs) in the City of Portland, and as such works to improve the economic conditions along SE Division between 117th and 148th Avenues.

DMA has identified Community Benefit Agreements (CBAs) as a tool to assist local business, especially businesses owned by women and People of Color, two groups that have traditionally faced significant barriers in accessing the bidding process for city contracts. For the reasons state below, DMA urges the City Council to implement the use of CBAs across all city financed construction projects.

- The primary beneficiaries of these agreements will be women and minority owned businesses.
- Benefiting businesses are locally owned which ensures that at least 60% of the revenue will remain in the local economy, which will further enhance our local businesses.
- Use of CBAs will become a tool to remedy the historical barriers faced by women and minority owned business in the construction field.
- CBAs will assist women and People of Color to enter into and find work on a regular basis in the construction field. DMA notes that both groups have historically faced barriers to training and employment in the trades.
- East Portland Action Plan (EPAP) has identified CBAs as an anti-displacement strategy in that construction jobs are living wage jobs. Increasing access for women and People of Color to living wage jobs will allow these

groups to remain in their communities as costs of housing sky-rocket in Portland. DMA also notes that East Portland has a significant portion of the city's low income and minority population.

DMA encourages the City Council to implement the following best practices in a CBA program:

- Establish signed agreements to assure accountability.
- Create a collaborative and transparent process in developing and implementing a CBA program between the city and community groups.
- Develop clear and explicit goals
- Require clear data collection and monitoring
- Require an ongoing and meaningful oversight process, including regular reports. Said oversight should include community groups including contractors, training programs, union groups, as well as other community partners.
- Capacity building mechanism that includes outreach to potential contractors, including appropriate funding.
- A review of city bidding regulations, and the identification of potential barriers to women and minority contractors, elimination of barriers when possible, and supports to contractors to access the bidding process.

DMA would like to point out that other municipalities across the country have successfully used CBAs as a means of increasing access women and minority owned business into the construction trades. This added access has also assisted women and minorities in finding employment in the construction trades. DMA believes that the City of Portland can and should follow the lead of other cities and implement a plan for CBAs to be a part of all city financed construction projects.

Sincerely,

Division Midway Alliance

11918 SE Division St., # 386

Portland, OR 97266

All the best,

Lori Boisen,

Division Midway Alliance

for Community Improvement

Building a better Midway

503 841 5201

11721 SE Division Street

<http://www.divisionmidwayalliance.com/>



▲ Division
▲ Midway
▲ Alliance

September 22, 2016

Honorable Charles Hales
Honorable City of Portland Commissioners
1221 SW 4th Ave.
Portland, OR 97204

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Division Midway Alliance
Mail: 11918 SE Division, Box 386
Portland, OR 97266
503-841-5201
Divisionmidwayalliance.com

- Require an ongoing and meaningful oversight process, including regular reports. Said oversight should include community groups including contractors, training programs, union groups, as well as other community partners.
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Sincerely,

Division Midway Alliance
11918 SE Division St., # 386
Portland, OR 97266

Division Midway Alliance
Mail: 11918 SE Division, Box 386
Portland, OR 97266
503-841-5201
Divisionmidwayalliance.com

Moore-Love, Karla

From: Bev Logan <bevloganpdx@gmail.com>
Sent: Thursday, September 22, 2016 3:20 AM
To: Council Clerk – Testimony
Subject: MACG's CBA testimony 9-22-2016
Attachments: MACG council testimony, CBA support, bl.docx

September 22, 2016

Members of the Council, I'm Beverly Logan, a leader with Metropolitan Alliance for Common Good. MACG is a broad-based organization of faith, labor, health, education and other community non-profits, who work together on the issues pressing on our families.

MACG has worked over decades, including in its original days as the Portland Organizing Project (POP), on many different issues around publicly funded projects in Portland. We've had to fight repeatedly against misinformed and even fully anti-union sentiments with regards to fair labor standards that reflect key social values of MACG's faith caucus and other member institutions.

When this CBA was being developed by a broad cross section of community interests, we were thankful and hopeful that organizations like ours could stop wasting so much of our scarce resources on refighting the same battles, for family wage jobs and benefits, on every publicly funded project we engaged. We thought this was a done deal and that it would establish a predictable and reliable floor upon which community groups, private interests, and the City could build other critical elements to advance the common good. But here we are, instead, trying to prevent you from ripping up those floorboards.

MACG is troubled by this proposed reversal and rejection, by the City, of the thoughtfully articulated will of the community that has entrusted you with our governance. It feels very much like the results from the pilot projects have been selectively interpreted by interests opposed to Organized Labor and dismissive of the organized community process that produced the CBA.

The pilot results speak for themselves, exceeding goals, even doubling delivery on targets. To single out a low figure for journey level females is disingenuous. That career level takes years to achieve and obviously new recruits, clearly present in the new pipeline, can't be converted to journey status without the intervening years of experience.

If the critique of the pilot results had involved the same community collaboration that produced the CBA, it would merit respect. Community groups have no interest in supporting a model that doesn't accomplish our stated goals.

The Status Quo is a powerful thing. Moving a bureaucracy away from the status quo requires bold and persistent leadership. The community engaged in a long, thorough, deliberative, democratic process to produce the CBA model, which so far has benefitted the community. We call on you council members to resist the pull of status quo, and the influence of anti-union voices internal or external to the City's bureaucracy. We ask for your bold and persistent leadership in respect and support of the Community Benefits Agreement, complete with the union and PLA requirements the community saw as necessary to achieving its goals. To allow one perspective--distorting fault and dismissing victories in the initial tests of the model--to define how you proceed is not persistent and certainly not bold. We expect you to stand for the community and the Community Benefits Agreement. At the very least, we expect you will allow CBA implementation for a period of time adequate to accumulate a sample size of more than one moment or two projects.

If the results, according to views opposing the CBA, are comparable to their suggested alternative, then there is clearly no harm in allowing the CBA the time and support to overcome limitations any project will experience early in its life.

Eliminating union and PLA elements may well increase the profits of private businesses, or the political power of ideological interests. Upholding union elements, however, increases the stability and prosperity of our workers and our community. The historical and economic record on this is very clear. When unions are strong, all workers benefit. When unions are weak, the middle class deteriorates.

You have control of the bureaucracy. MACG calls on you to resist taking it backward at the first opportunity, and to use your power instead to steer it firmly ahead in collaboration with the community in support of the CBA. Please reject the report as written. Thank you.

Moore-Love, Karla

From: Kirsten Isaacson <KirstenI@seiu49.org>
Sent: Wednesday, September 21, 2016 9:15 PM
To: Council Clerk – Testimony
Subject: testimony for 9.22 mtg, 1061
Attachments: SEIU49 Testimony_CBA pilot sept 2016.pdf

Attached is testimony regarding agenda item 1061 for the council meeting happening September 22, 2016.

Thank you.

Kirsten Isaacson
Research Lead
SEIU Local 49
(503) 964-5277

This message is intended only for the use of the individual(s) or entity(ies) to whom it is addressed and who are the intended recipients, is confidential, and may contain information that is privileged and exempt from disclosure under applicable law. Unless you are the addressee, or are authorized to receive this message for the addressee, and are an intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, its attachments or any information contained in the message or attachments, is strictly prohibited. If you are not the addressee or intended recipient, please advise the sender by reply e-mail and delete the message and any attachments.



September 22, 2016

Portland City Council, Mayor's Office
1221 SW 4th Ave
Portland, OR 97204

RE: Evaluation of Community Benefit Agreement pilots

Dear City Commissioners and Mayor:

I write on behalf of the 12,000 healthcare and property service members of SEIU Local 49. Combined with our brothers and sisters at SEIU Local 503, SEIU is the largest union in the state representing over 65,000 public and private sector workers throughout Oregon and Southwest Washington. Our mission as a union is to improve the quality of life for our members, their families, and dependents by achieving a higher standard of living, by elevating their social conditions, and by striving to create a more just society.

We are part of a broad coalition of community partners who are working together to address the complex issues that have resulted in disparate impacts for communities of color. We are united in the belief that the benefits of the City's investments must be broadly shared, focused particularly on achieving equitable outcomes for communities who have historically been burdened by or currently experience displacement from public investments and development. We are very concerned with the way in which the City of Portland has handled the Community Benefits Agreement (CBA) pilot results and the intended next steps.

Given that our membership is significantly comprised of women and people of color, we appreciate Community Benefit Agreements as tools to create good jobs and equitably distribute opportunities.

We are writing today to encourage you to *vote against* accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic as it a) does not accurately describe the success and lessons learned from the CBA pilots and b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

There are numerous issues with the document and proposed next steps, including:

- Excluding any PLA language
- Capping any community investment to 1% of project costs
- Naming the "Community Equity and Inclusion Plan (CEIP)" as the go-forward template, to be used by all Bureaus going forward. This template is currently in early draft form and has had zero community input, instead has been written by internal City staff and legal. It is planned to go before City Council in December 2016
- Explicitly calling out not using CBAs

1-800-955-3352
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3536 SE 26TH AVE
PORTLAND, OR 97202

@SEIU49
TWITTER

SEIU LOCAL 49
FACEBOOK

WWW.SEIU49.ORG

- Stating that the City will only apply the “CEIP” to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any oversight committee to an advisory role going forward

Instead, we request that the City achieve equitable outcomes for diverse community members by holding themselves to a higher standard, which includes: (1) true partnership between City, community and labor partners; (2) transparency in process, strategy and outcomes; and (3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals. We believe the City’s existing efforts and project goals regarding workforce diversity are a good place to start, but lack key mechanisms that are critical to success. These mechanisms, which would indicate a true partnership with the community and help the City to efficiently meet its standing workforce and contracting equity goals, include:

- **High road construction and service career pathways** that pull people out of poverty
- **A collaborative and transparent process** between the community and the City
- **Clear and explicit goal setting and data monitoring**
- **Clear engagement and commitment secured by all relevant parties**, specifically including training providers, community partners, contractors, and labor unions
- **Built-in mechanisms to support the necessary community capacity building**, not capped at 1% of project costs
- **Ongoing meaningful oversight and accountability**

Numerous cities have successfully used Community Benefit Agreements to ensure that a broad swath of city residents share in the wealth of economic development. The creation of good jobs, during the construction phase and in the on-going operation of buildings, is critical to addressing the affordability of our City, growing income-disparity, and the inequitable distribution of low-wage jobs among women and people of color. Despite characterization in the current report, CBAs are a proven, successful tool. We must not revert back to aspirational words and ineffective goal-setting in the pursuit of equity and good jobs, especially with a proven method for change in-hand.

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,

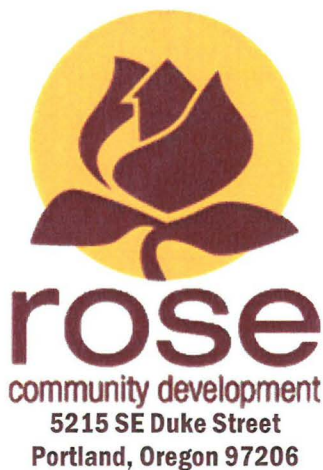
Maggie Long
Executive Director, SEIU Local 49

Moore-Love, Karla

From: Nick Sauvie <nick@ROSECDC.org>
Sent: Wednesday, September 21, 2016 3:17 PM
To: Hales, Mayor; Commissioner Fish; Commissioner Fritz; Commissioner Novick; Commissioner Saltzman; Council Clerk – Testimony
Subject: Community Benefits Agreements
Attachments: 2629_001.pdf

Please see the attached letter. Thank you for your consideration.

Nick Sauvie
Executive Director
503-788-8052 x16



ROSE connects our community to build good homes, healthy families and neighborhood opportunities.
Like us on [Facebook](#) | Follow us on [Twitter](#)

September 21, 2016

Mayor Charlie Hales
1221 SW Fourth Avenue
Portland, OR 97204



AUDITOR 09/21/16 PM 5:06

Dear Mayor Hales,

I am writing to support the Community Benefits Agreement (CBA) process that the City Council approved in 2012. I oppose the City's attempt to water down its commitment to train, hire and contract with people of color and women, the so-called "Community Equity and Inclusion Plan."

The Water Bureau CBA promoted by the Metropolitan Alliance for Workforce Equity has been far and away the most effective diversity and inclusion process that I have seen related to public contracting in Portland. I do not understand why the City chooses to undermine such a dramatic success. Please tell me:

- Do you think it is acceptable that 95% of City contracts – hundreds of millions of dollars over a period of years – go to white male owned firms?
- Will you create a meaningful pathway to careers for the people of East Portland, people of color and women? To date the City's commitment has been next to nothing.
- Are you tired of stories that call Portland "the whitest city in America" and go on to list indignities suffered by communities of color here?

It is said that insanity is to keep doing the same thing expecting different results. Don't be insane. Support Community Benefits Agreements that have meaningful goals, transparency and accountability.

Sincerely,

Nick Sauvie
Executive Director

cc: Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Steve Novick
Commissioner Dan Saltzman

Moore-Love, Karla

From: Kelly Haines <khaines@worksystems.org>
Sent: Wednesday, September 21, 2016 1:28 PM
To: Council Clerk – Testimony
Cc: Satterfield, Vivian
Subject: Written testimony regarding Sept. 22nd City Council agenda item 1061
Attachments: CBA City of Portland Testimony_OPAL.pdf

Greetings:

Please see attached for written testimony regarding the Sept. 22nd City Council agenda item 1061.

Please reach out with any questions.

Respectfully,

Kelly Haines
Senior Project Manager
Worksystems
1618 SW 1st Ave. Suite 450
Portland, OR 97201
p 503.478.7331



###



OPAL
Environmental Justice Oregon

opalpdx.org

3202 SE 82nd Ave, Suite B, Portland, OR 97266 | 503-774-4503

September 22, 2016

To: Portland City Council, Mayor's Office
1221 SW 4th Ave.
Portland, OR 97204

AUDITOR 09/21/16 PM 5:06

Dear City of Portland Commissioners and Mayor Hales,

Representing low income communities and communities of color, OPAL Environmental Justice Oregon recognizes that the top-down approach to economic development is leaving behind our communities and failing to tap a new base of workers. The current economy has done nothing to lift up the many communities that have been historically and systemically left behind. We are seeing stagnating and declining wages and benefits, lack of retirement security, a growing gap between the wealthy and working families, staggering wealth and opportunity gaps for people of color, cuts to our social safety net, de-unionization and more. We envision a City of Portland that provides equal access to economic opportunity for all. Increase equity in opportunity will results from a shared focus on resolving the economic disparities faced by people of color, women and working families.

As recently reported in the Oregonian (Rede, George "Wealth gap makes retirement more elusive for blacks, Latinos" January 11, 2016), the Pew Research Center found that the median wealth of white households was 13 times greater than that of black households and 10 times greater than that of Latino households. Today the gap between black and white households is the widest since 1989, when whites had 17 times the wealth of blacks, according to Pew. Likewise, the gap between Latino and white households is the biggest since 2001. One way the City of Portland can help meaningfully address this widening disparity is to ensure that public investments lead to broad public benefits through implementing Community Benefit Agreements (CBAs). The City has a real opportunity to use the CBA model to bring access and opportunity to more community members through training, family-sustaining jobs, and increased business capacity on publicly-funded projects. It is proven to bring real community benefit to the region, and is supported by a broad range of groups from both community and labor, including OPAL Environmental Justice Oregon.

Community Benefit Agreements are a proven tool to achieve the equity that the City claims as its goal. The City must renew its commitment by upholding the high standards of the CBA, which include: 1) true partnership between the Owner, community and labor partners; 2) transparency in process, strategy and outcomes; 3) shared oversight and accountability measures where all parties (community, labor, contractors) are accountable for delivering on contracting and workforce equity goals.

**Building Power for Environmental Justice
and Civil Rights in Our Communities**

The City needs to advance CBA best practices, including:

- High road construction career pathways that pull people out of poverty
- A collaborative and transparent process between the community and the City
- Clear and explicit goal setting and data monitoring
- Clear engagement and commitment secured by all relevant parties, specifically including training providers, community partners, contractors, and labor unions
- Built-in mechanisms to support the necessary community capacity building, not capped at 1% of project costs
- Ongoing meaningful oversight and accountability

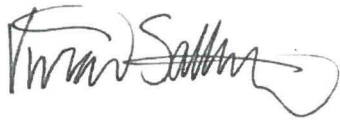
We are writing today to encourage you to *vote against* accepting the report to Council regarding the CBA pilots as written. The report that City Council has been asked to approve is problematic and a) does not accurately describe the success and lessons learned from the CBA pilots and b) will set a precedent going forward that goes in the wrong direction and is unacceptable for community and for labor.

There are numerous issues with the document and proposed next steps, including:

- Excluding any PLA language
- Capping any community investment to 1% of project costs
- Naming the "Community Equity and Inclusion Plan (CEIP)" as the go-forward template, to be used by all Bureaus going forward. This template is currently in early draft form and has had zero community input, instead has been written by internal City staff and legal. It is planned to go before City Council in December 2016
- Explicitly calling out not using CBAs
- Stating that the City will only apply the "CEIP" to alternative procurement projects, which are estimated to be merely 5% of total City contracts
- Shifting any Oversight committee to an advisory role going forward

Please do not pass the CBA pilots report as written. The City of Portland needs to fully engage with community in a meaningful way before making significant policy decisions about this tool.

Sincerely,

A handwritten signature in black ink, appearing to read "Vivian Satterfield", with a stylized flourish at the end.

Vivian Satterfield
Deputy Director

Moore-Love, Karla

From: Kelly Haines <khaines@worksystems.org>
Sent: Wednesday, September 21, 2016 11:47 AM
To: Council Clerk – Testimony
Cc: Matt Maris; ladiesdevita82@gmail.com
Subject: Written testimony regarding Sept. 22nd City Council agenda item 1061
Attachments: Danielle Marcial written testimony.rtf

Greetings:

Please see attached for written testimony regarding the Sept. 22nd City Council agenda item 1061.

Please reach out with any questions.

Respectfully,

Kelly Haines
Senior Project Manager
Worksystems
1618 SW 1st Ave. Suite 450
Portland, OR 97201
p 503.478.7331



###

My name is Danielle Marcial and I would like to share my experiences as an Apprentice Tradesperson in regard to the successes of The City of Portland's CBA Projects.

In April of 2014, I was dispatched to my very first construction assignment, by Laborers' Local 296, to the Portland Water Bureau's Interstate Facility construction project. I worked for a relatively small concrete contractor. Whitaker/Ellis initially hired me, a minority female, to comply with the CBA's labor agreement. I built a good association with the company and came to rely on them for work in the future.

In January of 2015, I was dispatched to the Sellwood Bridge to work on a water main project that was installed under the supervision of the Portland Water Bureau. The company I worked for installed the main lines in compliance with PWB standards and city crews worked on the tie-ins. When I eventually interviewed to become a Utility Worker II Apprentice at the Portland Water Bureau, I shared my previous experience as Laborer and my connection to its CBA projects.

It is my opinion that those experiences are what made me an ideal candidate out of 200+ applicants and 60+ interviewed prospects. I was hired by the City of Portland Water Bureau in October of 2015.

While I do believe that my drive, work ethic, and positive attitude determine my advances, I have to wonder if any of these opportunities

would have presented themselves without working under the CBAs.
Thank you for taking my testimony into consideration.

Regards,

Danielle Marcial

Moore-Love, Karla

From: Kelly Haines <khaines@worksystems.org>
Sent: Wednesday, September 21, 2016 11:26 AM
To: Council Clerk – Testimony
Cc: hunte@pdx.edu
Subject: Written testimony regarding Sept. 22nd City Council agenda item 1061
Attachments: Hunte testimony CBA 2016 .pdf

Greetings:

Please see attached for written testimony regarding the Sept. 22nd City Council agenda item 1061.

Please reach out with any questions.

Respectfully,

Kelly Haines
Senior Project Manager
Worksystems
1618 SW 1st Ave. Suite 450
Portland, OR 97201
p 503.478.7331



###

9/22/2016

AUDITOR 09/21/16 PM 5:06

Dear City Council Commissioners,

My name is Roberta Hunte. I am an assistant professor at Portland State University and a local playwright and filmmaker. My area of research is on black women and the construction trades. I have also worked with Oregon Tradeswomen as a Career Counselor to help place women in construction trades. I am delighted at the success of the CBA pilot Water Bureau Projects. This effort shows the positive outcomes that can happen if the City commits to an equity initiative and invests in workforce goals to increase the numbers of women and people of color on our construction projects. It is only through targeted workforce goals, community, union and City partnerships, and strong project oversight that these goals can be reached.

I am deeply troubled by the City's current proposal to abandon the CBA format and to adopt a Community Equity and Inclusion Plan. This plan erodes the advances made by the CBA. It is out of step with forward thinking project agreements of other municipal bodies in Portland and in other parts of the country who have succeeded in cultivating a diverse workforce. This plan is also not grounded in proven outcomes, and would be a dangerous addition to City wide mandates for future projects. In contrast the CBA pilot has proven outcomes and community buy-in. This pilot remains a positive example of what is possible.

The backward thinking of this version of the City's Inclusion Plan will have long-term and deleterious consequences. When women entered apprenticeships in 1978, it was due to Executive Order 11246 that prohibited discrimination against women on federal contracts. Specific goals were set to increase the participation of women and people of color on federal jobs. The percentage of women and people of color increased through the efforts of advocacy organizations, and community, union, and municipal partnerships. With Reagan's presidency federal oversight of compliance was moved to local jurisdiction and affirmative action efforts were weakened. This shift had a dramatic impact on a reduction in the number of women working on federal projects. The impact of this is felt today.

Today women and people of color have the best opportunities for work on federal contracts with project labor agreements and community benefits agreements. The realities of racism and sexism directly impact the lower numbers of women and people of color in the trades. Addressing this requires strong action, not the ambivalence of the Community Equity and Inclusion Plan.

If the City is serious about equity and workforce diversity, we must embrace strong goals for workforce and MWESB participation as necessary to direct efforts of all parties involved. Oversight is crucial and we must be committed to reaching the goals set around workforce. This cannot happen without long-term commitment from the City, community, and labor. Community pilots that have proven outcomes of increasing diversity must become our way forward.

Respectfully,
Roberta Hunte, Ph.D.

Moore-Love, Karla

From: Kelly Haines <khaines@worksystems.org>
Sent: Wednesday, September 21, 2016 11:24 AM
To: Council Clerk – Testimony
Cc: dawn@heartsandsparksproductions.com
Subject: Written testimony regarding Sept. 22nd City Council agenda item 1061
Attachments: CBA letter of support DawnJonesRedstone.pdf

Greetings:

Please see attached for written testimony regarding the Sept. 22nd City Council agenda item 1061.

Please reach out with any questions.

Respectfully,

Kelly Haines
Senior Project Manager
Worksystems
1618 SW 1st Ave. Suite 450
Portland, OR 97201
p 503.478.7331



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Hearts + Sparks Productions
5027 NE 10th Ave
Portland, OR 97211



September 21, 2016

Portland City Council Members
City Hall
1221 SW Fourth Avenue
Portland, OR

AUDITOR 09/21/16 PM 5:06

Dear Members of the City Council,

I am writing this morning to ask that the City Council, as representatives of its citizenry, implement the CBA and critical components on future construction projects.

I worked as a union carpenter for over six years before teaching hundreds of women to prepare for work in the trades at Oregon Tradeswomen for nine years. Most recently, I've become a full time filmmaker perhaps now best known for a film called *Sista in the Brotherhood* about a black apprentice carpenter who faces discrimination on the jobsite.

Despite my multiple career changes, my identity as a carpenter is one I proudly wear because I know how hard I had to work and how hard tradeswomen have to work everyday to survive in a male-dominated industry. There are only about six percent women working in the construction trades here in Oregon and for women of color like me, that number is much lower. We know that women in general and women of color are most likely to live in poverty. This fact makes access to living wage careers like those offered by the construction trades, all the more vital. Although I am referencing data, I can speak to it both from my own experience, fighting to reach journey-level status, but also of the many, many women I saw go out to work in the trades. Many times, a trades job was the pathway to their very survival when other higher-earning fields requiring expensive degrees or trainings were out of reach. Yet, these women so often faced discrimination making it hard to get onto a jobsite and ultimately to stay there.

This is one of the many reasons I am urging you to implement the CBA with its proven success rate. This agreement sets more than the aspirational goals of the CBP that may look good, but lack the strength to make real change. Setting requirements like those included in the CBA create real, lasting change that have the power to transform someone's life by giving them career access that they might otherwise be denied.

The people of Oregon are counting on you to do the right thing.

Dawn Jones Redstone
Owner, Hearts+Sparks Productions
Journey-level Carpenter
Director, *Sista in the Brotherhood*