

Community Equity and Inclusion Plan

DRAFT



Comment [WM1]: Our question “Are the elements in the draft Plan the right elements? What might be missing or need refinement?”

Maurice’s Comment: A lot is missing from this draft. It makes it sound like responsibility is being diverted from the City and Contractors to the ECPC in solving this issue of inequality. That issue among many others will be delved into further in the other questions.

Molly’s Response: The ECPC took over the role of the LMCOC (though this could be shifted back to a different group). No additional obligations were imposed on the ECPC although the manner in which information was shared is much more prescriptive and there are explicit obligations and more responsibility on the part of the owner and contractor. The ECPC takes on no more responsibility than that of the LMCOC and also does not have responsibility for the handling of the 1% funds.

Maurice’s Comment: Why does the document sound like the Contractor and Owner are trying to do the bare minimum?

Molly’s Response: What additional obligations would you impose on the Contractor and Owner?

Comment [WM2]: Questions for discussion-

From Maurice: Why is there inequality in the construction field in the first place. To our reckoning, inequality starts with the people at the top – the Owner and the OBE Contractors.

Will the Owner and most importantly the Contractor agree to be part of the solution? Everyone must contribute if we are to move forward. Diversity in the workforce benefits everyone, not just women and people of color.

From Vicqui: OBE Prime Contractors need to genuinely open their doors (opportunities) and be willing to hire DMW subcontractors

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TABLE OF CONTENTS

PREAMBLE.....3

DEFINITIONS.....4

ARTICLE 1 - PURPOSE.....5

ARTICLE 2 - SCOPE OF PLAN.....7

ARTICLE 3 – COMPLIANCE REVIEW AND EQUITY ASSISTANCE BY THE ECPC.....7

ARTICLE 4 – HIRING PROCEDURES.....10

ARTICLE 5 - COMMUNITY APPRENTICESHIP.....11

ARTICLE 6 - COMMUNITY WORKFORCE RECRUITMENT AND RETENTION.....14

ARTICLE 7 - SUBCONTRACTING.....17

ARTICLE 8 - REPORTING REQUIREMENTS AND ADMINISTRATION.....24

ARTICLE 9 – PENALTIES FOR NONCOMPLIANCE.....25

ARTICLE 10 - SEVERABILITY.....27

Revised 10.10.16

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 City has established the Community Equity and Inclusion Plan (the “Plan”) as a mechanism to have significant inclusionary impact ant to grow the capacity of minority, women-owned, and locally sourced disadvantaged area emerging small businesses~~Whereas, the Community Equity and Inclusion Plan (the “Plan”) is intended to have a positive impact, the Owner’s commitment must demonstrate success in goals and outcomes that build this aforementioned capacity, and exemplify the Owner’s commitment to help grow both the demand for and capacity of disadvantaged, minority-owned, women-owned, and emerging small businesses (“D/M/W/ESB”);~~

Whereas, the City has established a “Racial Equity Plan”, it is intrinsic to the Plan that the relevant elements of the Racial Equity Plan be fully integrated and actualized in the Plan and the pertinent outcome performance metrics.

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, including establishment of technical support to assist businesses seeking to be established as D/M/W/ESB; and

Revised 10.10.16

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

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

DEFINITIONS

Community Based Organizations (“CBO”) means public or private nonprofit 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. For the purposes of this Plan, an ESB that is not a MBE or WBE must be located in an economically disadvantaged neighborhood within the City of Portland.

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.

Comment [WM3]: Molly’s comment: Can we require the CEIP on low-bid contracts over \$15million? Will the contractors that bid on low bid project have the experience to implement the CEIP? Do they have equity or outreach coordinators on staff? Bid increase is expected but will tracking efforts change? Will goals be reached or ignored? How to ensure that bidders are responsive or responsible?

Revised 10.10.16

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.

Comment [WM4]: Vicqui's comment: Owner and OBE Prime contractors need to have a clear written policy, goals, and understanding about their responsibility, and to be followed by OBE prime contractors across the board on all contracting opportunities. Example cited by Maurice in the workforce, which also applicable to subcontracting as follows: "Good faith efforts are defined as an honest and genuine effort to meet the obligations...free from any intention or effort to avoid by any means such obligations." This has not been honored.

Molly's response: What would you suggest adding to this Plan to address your concern?

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 alternative procurement for 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.

Comment [WM5]: Maurice's comment: The CBA reads so different with things like "the purpose of this Agreement... is to ensure... that the Owner does not indirectly perpetuate the under-inclusion of racial and ethnic minorities and women," "maintain a spirit of harmony, labor management peace and stability", and "good-faith efforts is defined as an honest and genuine effort to meet the obligations... free from any intention or effort to avoid by any means such obligations".

Molly's response: This was taken from the CBA. Good Faith efforts was renamed as Equity Efforts but the definition remains the same- see definition above

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 under City Contract Number (insert contract no).

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, non-union organizations, 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. As allowable, non-union organizations will take all steps necessary to assist and support their workers in meeting the goals of 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.

2.9 The Plan will establish a process similar to the Housing Bureau N/NE Preference Program, wherein application assessment criteria weights the applicants commitment to representation of minority, women-owned, and local hires from disadvantaged areas of the City in businesses and workforce representation.

ARTICLE 3 – COMPLIANCE REVIEW AND EQUITY ASSISTANCE BY THE ECPC

3.1 **Purpose:**

Comment [WM6]: Maurice’s comment: Are you reluctant to commit to the Unions and have them commit as well?

You mention that Unions will “make all necessary Equity Efforts as defined by this Plan” and “assist and support their union signatory contractors in meeting the goals in this Plan.” Yet without commitment, how will you guarantee that as well as guarantee them work if they do provide a diverse workforce? The contractors may still send minority/women workers back. All the hiring and firing is done by the Contractor.

Molly’s response: Because the Union is not a party to this Plan, the Union has no exposure if it chooses not to engage in the Equity Efforts. Obviously we hope that the Union’s interest in equity is not contingent upon whether or not it has a contractual obligation. Is the Union’s engagement in equity efforts contingent upon the City guaranteeing the Union’s the work by making this Plan a PLA? How would you address non-Union contractor’s concerns about being excluded from the projects subject to such a Plan?

Regarding sending back minority/women workers, could we add a provision that requires notice to the City or ECPC when a worker is being sent back and justification therefor and give the City the right to require that worker ...

Comment [WM7]: Maurice’s comment: What are you requiring non-union hiring halls and non-union contractors to do?

Molly’s response: I added in “non-union organizations” everywhere that “union” was referenced to ensure that both unions and non-unions were subject to the same requirements. Non-union contractors are required to comply with the Equity Efforts in the same manner as a union contractor.

Comment [WM8]: Maurice’s comment: With unions, contractors are allowed to ‘pierce the books’ and ask minorities and women. However, non-union hiring halls do not allow that. Why not require non-hiring halls to adhere to the Equity Plan and allow/require their contractors to ‘pierce the books’?

Molly’s response: Non-union hiring halls will be subject to the same obligations as Unions. To the extent non-hiring halls are unable to ...

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- 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.

3.2 A. A baseline will be established and tracking will be done via progress metrics at monthly independent oversight committee meetings with quarterly progress reports available to the public.

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. An independent oversight committee will meet monthly over the duration of the project for all City contracts above a 10 million dollar threshold. Stages of Completion Assessments should be made public quarterly. Contractors that do not demonstrate compliance with the contract equity performance commitments should be prohibited from obtaining future City contracts.

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Comment [WM9]: Maurice's Comment: Owner- present project; hold meetings; provide documentation. ECPC – conduct compliance review for equity efforts, recruitment and retention, apprenticeship, workforce and subcontractor goals; request meetings; provide recommendations and feedback; facilitate connections; report findings, complete conflict of interest form. Contractor – provide info on outreach, training, anti-harassment, and EEO initiatives; list of subs, scopes, and estimated subcontract amounts; identify scopes exceeding \$200k; present 3 month data on utilization and 3 month forecast.

I listed out the responsibility of the Owner, ECPC, and Contractor and as you can see, the ECPC has roughly double the responsibilities. Of course, we do want the ECPC monitoring the Contractors and Owner. Shouldn't it be clear that it is the responsibility of the Owner and Contractor to comply fully with the Equity plan?

Molly's response: The ECPC's role should be akin to the role of the LMCOC, which was intervention and assistance to reach equity goals. The ECPC should also have power to call meetings if needed and to report its findings. The Owner and Contractor have more duties in relation to providing the ECPC the information it needs to fulfill the ECPC's role of intervention and assistance. The remainder of the Plan makes clear that the responsibility to reach goals and comply with Equity Efforts is on the Contractor.

Is there a duty that the ECPC is charged with that you think should not be the ECPC's

Comment [WM10]: Need to discuss whether timing is feasible for CPO, Bureau, or Contractor

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3.4. 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.

Comment [WM11]: Maurice's comment: Wouldn't it make more sense for the meetings to be monthly rather than quarterly?

Molly's response: How often did the LMCOC meet? It should probably align with that. Monthly seems a bit burdensome for everyone involved. Is there a middle ground? Once every two months perhaps?

4.5. Within one month prior to the first quarterly-monthly meeting and within one month of each quarterly meeting-report held-provided thereafter, the Owner shall provide to the ECPC the prior three (3) months documentation of the Contractor's Equity Efforts. Attendees at the quarterly meeting shall include Subcontractors, Unions, non-union organizations, CBOs, workers, and any other interested individual or organization.

Comment [WM12]: Michael's comment: Three months is too long of a time frame for submitting data. Some contractors can complete a scope and leave before non compliance can be detected.

5.6. 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.

Molly's question: How often did the LMCOC look at this data? Monthly seems burdensome. Is there a good middle ground? What about subsection 5 below that allows the ECPC to request additional meetings or information on an as-needed basis? Would ECPC be able to pick out trades or subs for which data is needed on a shorter timeline?

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 tracked by trade, apprentice, and journey level status for minority, women, and disadvantaged area emerging small businesses 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.

Comment [WM13]: Maurice's comment: Will you be inviting Union reps to the quarterly (we suggest monthly) meetings so they can hear the dismal data reporting and perhaps provide insight on what else we can do? Will you be inciting non-union hiring halls to join the discussion?

Molly's response: Hopefully the data isn't dismal- but yes, that is a great idea and I have added that at the end of subsection 4

C. On a quarterly-monthly 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, non-union organizations, CBOs, and workers and serve as a liaison between Contractor, Subcontractors, Unions, non-union organizations, community organizations, and workers.

Comment [WM14]: Maurice's comments: Why is the burden placed completely on the ECPC to act as liaison between Contractor, Subcontractor, Unions, community organizations and workers? Shouldn't the Owner and Contractor take an active role in the process to further the dialogue between all parties?

Molly's response: Based on testimony on the CBA report, engagement of the various groups that could assist the Contractor to reach equity goals was imperative. The LMCOC served this function and we envisioned this as a good opportunity for the ECPC, as opposed to a burden. Would utilizing a group other than the ECPC be a better option?

D. On a quarterly-monthly basis and as needed per the Owner's request, the ECPC will report its findings to the Owner and the Contract Compliance Specialist.

Revised 10.10.16

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.

Revised 10.10.16

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

A. A baseline will be established and tracking will be done via progress metrics at monthly independent oversight committee meetings with quarterly progress reports available to the public.

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 and non-union hiring resources for employment opportunities.
- C. The Contractor or Subcontractor may request and the unions or non-union organizations 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, non-union organizations, apprenticeship programs, and CBOs of the goals in this Plan and shall request that the unions, non-union organizations, apprenticeship programs, and CBOs refer diverse journey level workers and apprentices 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.

Comment [WM15]: Michael's comment: This language appears to suggest allowing non union contractors to hire union members without an agreement.

Molly's response: This provision takes into consideration that the Contractor may be union or may be non-union and different approaches may be applicable and we attempted to encompass all of that. We also would like cooperation from unions even if the contractor is non-union. Can this be accomplished? If an agreement between the Contractor and the union is required, what does that agreement look like?

Comment [WM16]: Maurice's comment: These appear duplicative. Do these requirements apply to non-union contractors? If so, it won't work. How can they access hiring halls without provisions in here about that process?

Molly's response: Subsection B is a bit broader as groups may have different hiring services beyond referral of applicants as set forth in Subsection C. This applies to both unions and non-unions. How can we make this work? What are the barriers and can they be overcome through contractual provisions between the Owner, Contractor, and Subs in this Plan? Could we do a Memo Of Understanding with the Union and non-Union groups?

Comment [WM17]: Michael's comment: Language is too vague.

Molly's response: What additional language would you suggest? This was taken from the CBA, section 7.1.

ARTICLE 5 – COMMUNITY APPRENTICESHIP

Revised 10.10.16

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.

A. A baseline will be established and tracking will be done via progress metrics at monthly independent oversight committee meetings with quarterly progress reports available to the public.

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. Apprenticable 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.

Comment [WM18]: Maurice's comment: This allows contractors to opt out of creating a retirement plan or providing health insurance for non-union which is unacceptable. The Owner does not have to follow the Prevailing Wage provision. Instead, they should require the contractors to provide health and retirement. For example, Clean Energy Works required their contractors to provide those things so it is possible.

Molly's response: Health insurance is still required as is mandated by state law and city code. The only exemption is from retirement benefits, however fringe wages will still be paid in lieu of retirement benefits so no dollars are lost for the workers. The City is required to pay prevailing wage on all public works projects that include construction, reconstruction or renovation of buildings, ...

Comment [WM19]: Maurice's comment: If you have BOLI registered apprentices, you must be registered as a Training Agent. If a contractor is expected to have 20% utilization, they need to be a training agent.

Molly's response: No disagreement. This provision is consistent with that requirement.

Comment [WM20]: Michael's comment: There needs to be more clarification concerning how many attempts contractor makes to satisfy requirements.

Molly's Response: What is a reasonable amount of attempts we could insert and should those attempts be spread out amongst various apprenticeship programs?

Comment [WM21]: Maurice's comment: What does this mean "if the apprenticeship program is not able to, then reach out to 3 other apprenticeship programs"?

Molly's response: If the apprenticeship program that was initial contacted is unable to provide the women and minority apprentices requested, the contractor is to reach out to 3 other apprenticeship programs to obtain the women and minority apprentices.

Comment [WM22]: Maurice's comment: Are there screening mechanisms in place from these CBOs to verify eligibility to work in the trades? Do these CBOs have workforce programs? This could easily set recruited jobseekers up for being ill-prepared to enter the trades.

Molly's response: That is a good question. What sort of requirements should be added to ensure that the CBOs have appropriate ...

Revised 10.10.16

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, and women.

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 independent oversight committee and 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 independent oversight committee and Owner only for extreme circumstances.

Comment [WM23]: Maurice’s comment:
Can you please explain further?

Molly’s response: Contractor must keep records of fringe benefits paid on employees’ behalf

~~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, and women who are interested in careers in the construction industry.
- B. Agreement that a more robust equity approach is required for the Project pursuant to the City's goals on equity and inclusion.

6.2 Goals: For contracts at any tier of \$100,000 or more, the 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%) and local hire from disadvantaged areas of the City shall be (25%) of total apprenticeable labor hours by trade, 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.
 - ~~2.3. A baseline will be established and tracking will be done via progress metrics at monthly independent oversight committee meetings with quarterly progress reports available to the public.~~
- B. Journey Level: The workforce diversity goals for minority and women journey level workers shall be twenty-eight percent (28%) and local hire from disadvantaged areas of the City shall be (20%) of total project hours, which shall be disaggregated as follows:

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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.
- 2.3. A baseline will be established and tracking will be done via progress metrics at monthly independent oversight committee meetings with quarterly progress reports available to the public.

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.

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Comment [WM24]: Maurice's comment: How would this suggestion "conduct workshops..." help alleviate inequality and make minorities and women feel comfortable? It is not their job to recruit other women and minorities. Right now, a huge issue is retention of minorities/women and the fact that they are not receiving the same amount of hours as their white male counterparts. It's hard to see a minority/women worker wanting to refer a friend when the possibility of being let go is so high. Then, when you add in isolation, microaggressions and harassment, it becomes an even more unreasonable request.

If your aim is truly to hear the voices of the workers, why not include all workers in the discussion and see how they feel about the inequality, isolation, microaggressions and harassment? The burden isn't just on minorities and women to combat these issues, it's the whole community.

Molly's response: I agree with you however this same provision was in the CBA at section 11.2(b) so I kept it in. I am amenable to removing it but others will have to weigh in on that decision.

Comment [WM25]: Maurice's comment: If an issue happens in the workplace, how will non-Union workers receive help on things like discrimination, microaggressions and harassment? Will the Owner appoint an advocate or legal counsel for them?

Molly's response: Other than what is laid out in this section, are there other efforts employed by Unions to deal with these types of issues and what are those efforts? Can we insert those additional efforts into this section? We could insert the City or other group as an advocate but the City could not provide legal counsel through the City Attorney Office. Could the City partner with a legal clinic to provide legal service to workers? How would that be funded?

Comment [WM26]: Are there more specific grievance procedure from CBA 5.3 or other Equity plans that could be inserted here?

Revised 10.10.16

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, ~~and local hire disadvantaged area~~-workforce within the identified trades upon proof of the Unions' outreach and

Comment [WM27]: Maurice's comment: This is not a comprehensive survey. What would it actually take to alleviate feelings of isolation and harassment? Can you give concrete steps and examples?

Molly's response: Providing an anti-harassment policy, conspicuously displayed, as well as mentoring, are some ways that we intend to address this issue. We are looking to you for ideas on what concrete steps can be taken in this regard to add to this provision.

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.

~~4.A.~~ If the exemption request is found to be justified, this will serve as cause to direct training dollars toward that specific trade.

2. Except where otherwise exempted above, exemptions to goals, training or mentorship requirements must be approved by the independent oversight committee and 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 independent oversight committee and Owner only for extreme circumstances.

Comment [WM28]: Maurice's comments: Why are the requirements for exemptions so lenient? Why is there even an option for an exemption to be based on current market availability? With that, we will never move the needle towards increasing diversity. It will be business as usual.

Molly's response: I added the exemptions to help us to prove that our efforts are narrowly-tailored in the event that we are challenged on the constitutionality of gender-based and race-based goals. However, I am open to deleting this provision. Others will have to weigh in.

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ARTICLE 7 – SUBCONTRACTING

7.1 Purpose:

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

Comment [WM29]: Molly's suggested revision based on above

Comment [WM30]: Vicqui's revision: Many qualified D/M/W/ESB's lack of proven success in getting contracts on Commercial construction projects are due to barriers as follows:

1. Most large OBE Primes have their own favorite non DBEs subs that they use over and over again, and their lack of interest/relevance on opening the subcontracting opportunities to bona fide D/M/W/ESBs; Sometimes they create phony partnerships with a WBE spouse to satisfy requirements, to avoid using legitimate DBE firms;
2. As a result of above, they do bid shopping, which is very unethical, and unfair to minority small businesses

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);

Comment [WM31]: Molly's suggested revision based on above

Comment [WM32]: Vicqui's comment: Please insert "Hard" before "Goal"

Molly's response: We do not have the legal support for hard goals and as such, our goals are aspirational but the efforts are required

Revised 10.10.16

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 that fall within the amounts subject to the PCDP (INSERT ACTUAL AMOUNTS???)
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.

Comment [WM33]: Vicqui's comment: 22% of hard construction costs shall be disaggregated as follows: Change 12% DBE/MBE to 15% DBE/MBE; 5% WBE (no change); and 2% ESBs.

Molly's response: That seems reasonable to me. Others will need to weigh in.

Comment [WM34]: Do we need insert the more detailed provision from CBA 13.1?

Comment [WM35]: Vicqui's comment: If OBE Prime contractors are still reluctant/unwilling for any reasons, there is a need for them to prequalify all subs and strictly require performance bonding, financial statements, project references

Molly's response: What issues are you seeing in this regard? The City will sometimes exempt DMWESB subs from bonding and insurance requirements. If this provision is inserted, that would no longer be an option.

Revised 10.10.16

- 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. If the Contractor or an Affiliate or subsidiary of the Contractor will be participating in the solicitations as a bidder or intends to self-perform a scope of the Work, the Contractor shall disclose that fact in the selection process and announcements. In addition, the Contractor shall identify the conditions, processes, and procedures the Contractor will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to, objective independent review and opening of bids or proposals for the bid package involved by a representative of the City (“Contractor’s Bid Plan”), and the Contractor’s participation in solicitations as a bidder or in self-performing a scope of the Work is subject to the City’s approval of the Contractor’s Bid Plan.

Comment [WM36]: Addresses 5.34.890 E11

iii-iv. Contractor shall procure all Subcontractors and Suppliers for all divisions of Work in the completion of the Project by selecting the lowest bidder who is in compliance with the Plan and the City Racial Equity Plan using one or more of the following methods:

Comment [WM37]: Addresses lowest bidder requirement

a. Informal Solicitations - Work packages estimated between \$50,000 up to-\$200,000

Comment [WM38]: Wouldn’t this fall in the PCDP – See 7.3A(3)

1. No public advertisement. 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).

Comment [WM39]: Might not be possible to omit advertisement as that is required to be “competitive” subcontractor selection process per 5.34.890 E 11 (a)

2. Solicit bids utilizing the City's PCDP. If less than two responsive bids are received, proceed to the following steps.

3. Target a minimum of five D/M/W/ESBs in each division of Work.

4. 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.

Comment [WM40]: Addresses 7.3A which requires utilizing PCDP

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**
Provide technical assistance to 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.

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Revised 10.10.16

- 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.
 - 6.7. Upon the request of an unsuccessful bidder, Contractor shall provide unsuccessful bidders with information on the qualification and selection process and on the Contractor's selection decisions to enable the unsuccessful bidders to understand the reasons why they were not selected and to improve the bidders' substantive

Revised 10.10.16

qualifications or methods of competing. This includes, but is not limited to, briefing meetings held with individual bidders or, if agreed upon by the bidder, in groups of bidders who all bid on the same bid package.

Comment [WM41]: Addresses 5.34.890 E
14

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

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

A. A baseline will be established and tracking will be done via progress metrics at monthly independent oversight committee meetings with quarterly progress reports available to the public.

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;

Revised 10.10.16

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. Contractors that do not demonstrate satisfactory performance as determined by the independent oversight committee and the Owner will be prohibited from obtaining future City of Portland contracts.

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

Comment [WM42]: Maurice’s comment: Why is the penalty for not fulfilling the Hiring Procedure or Community Apprenticeship requirement so low? Why isn’t it \$500 instead of \$250? The same goes for failure to meet Community Workforce Recruitment and Retention and Subcontractor requirements; \$50 a day is too low.

Molly’s response: This is a liquidated damage clause. Penalties are not upheld in contracts and the courts strike those. Liquidated damages must be based upon a reasonable estimate of what actual damages might be. In calculating the cost of actual damages, we look only to the damages that would be sustained by the City due to the Contractor’s failure to fulfill these efforts. In doing so, we looked at the cost for City staff to implement these programs and these were the amounts that were calculated based on hourly rates, hours worked, and costs for programs. Do you anticipate that the City incurs other costs that were not taken into consideration?

Comment [WM43]: Vicqui’s comment: Accountability. Primes should be accountable have honor system for fair contracting practices; They should have a penalty such as losing contract if they don’t meet subcontracting goals and also workforce goals

Molly’s response: Hard goals on workforce or subcontracting are not an option based on the information we have from the disparity study, however, if the contractor fails to fulfill the Equity Efforts which are all of the items in each section labeled “Requirements” then the contract may be terminated

Revised 10.10.16

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