

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 07-174

Approving an Intergovernmental Agreement with the Portland Development Commission for Urban Renewal Funding to Partially Finance the Cost to Relocate the Hawthorne Bridge West Bound Off-Ramp to Create a Site for a Courthouse

The Multnomah County Board of Commissioners Finds:

- a. Resolution 07-055 directed Facilities and Property Management (FPM) to proceed with the Intergovernmental Agreement (IGA) with the Portland Development Commission (PDC) under the terms laid out in the preceding MOU to secure \$9 million in Downtown Waterfront Urban Renewal Area funds for the partial financing of the relocation of the existing Hawthorne Bridge west-bound off-ramp.
- b. FPM has negotiated an IGA with PDC which includes the following terms:
 - 1) Financial assistance from PDC up to \$9 million to be used to relocate the existing Hawthorne Bridge west-bound off-ramp to allow creation of a site for a new courthouse.
 - 2) County's commitment to make a good faith effort to complete the courthouse.
 - 3) Joint solicitation for the sale of the Morrison Bridgehead Properties subject to a redevelopment agreement.
 - 4) Joint consideration of a possible Hawthorne Bridgehead Urban Renewal Area.
 - 5) County cooperation with respect to possible redevelopment of the following properties:
 - South Hawthorne Bridgehead
 - Hooper Detox Center
 - Hawthorne Bridge Shop
- c. The IGA requires approval from both the County and PDC. PDC is scheduled to hear this matter on November 14, 2007.

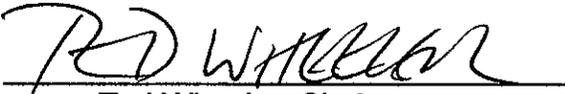
The Multnomah County Board of Commissioners Resolves:

1. The attached Intergovernmental Agreement with the Portland Development Commission is approved and upon approval of the agreement by PDC the County Chair is authorized and directed to sign the agreement in a form substantially as set forth in the attachment.

ADOPTED this 1st day of November, 2007.



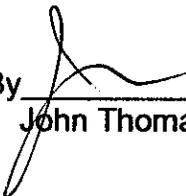
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 

John Thomas, Assistant County Attorney

Submitted by:

Lisa Naito, Commissioner District 3
Maria Rojo de Steffey, Commissioner District 1
Ted Wheeler, County Chair

**INTERGOVERNMENTAL AGREEMENT
HAWTHORNE BRIDGE RAMP RELOCATION
COUNTY COURTHOUSE
MORRISON BRIDGEHEAD PROPERTIES**

This Intergovernmental Agreement (“Agreement”) is entered into on _____, 2007 (the “Effective Date”) between Multnomah County, Oregon (“County”), and the City of Portland, acting by and through the Portland Development Commission, its duly designated urban renewal agency (“PDC”). PDC and County may be collectively referred to herein as the “Parties” and, individually, as a “Party”.

RECITALS

- A. County desires to redevelop the block bounded by SW Naito Parkway, SW First Avenue, SW Madison Street, and SW Main Street in the City of Portland, known as Block 7 (the “Redevelopment Property”), as a new Multnomah County Courthouse.
- B. The Redevelopment Property is currently bisected by the Hawthorne Bridge off ramp and, as part of the preparation of the Redevelopment Property for a new courthouse, County must relocate the off ramp.
- C. A portion of the relocated off ramp will fall within the Downtown Waterfront Urban Renewal Area and County has requested nine million dollars (\$9.0 million) from PDC to assist it in relocating the off ramp.
- D. PDC is willing to provide such financial assistance provided that, among other things, County agrees to work jointly with PDC to offer the property bounded by SW 1st Avenue, SW 2nd Avenue, SW Alder Street/Morrison Bridge ramp, and SW Washington Street/Morrison Bridge ramp and the property bounded by SW Naito Parkway, SW 1st Avenue, SW Morrison Street, and SW Stark Street (collectively, the “Morrison Bridgehead Properties”), also located with the Downtown Waterfront Urban Renewal Area in Portland, for private redevelopment.
- E. Relocating the Hawthorne Bridge off ramp and offering the Morrison Bridgehead Properties for private redevelopment will enable development of a new Multnomah County Courthouse (the “Courthouse”) on a site formerly devoted exclusively to transportation infrastructure, will allow private redevelopment to proceed on other sites that were considered as possible locations for the new Courthouse (such as Block 10 in Portland, bounded by SW 1st Avenue, SW 2nd Avenue, SW Madison Street, and SW Main Street and commonly known as Two Main Place), and will further the Downtown Waterfront Urban Renewal Plan.
- F. On April 24, 2007, County and PDC entered into a Memorandum of Understanding (“MOU”) summarizing the foregoing terms and, pursuant to the MOU, now desire to enter into this Intergovernmental Agreement to implement the transactions contemplated thereby.

AGREEMENT

ARTICLE I – HAWTHORNE BRIDGE RAMP RELOCATION AND COURTHOUSE

- 1.1 PDC Financing.** Subject to the terms and conditions of this Agreement, including but not limited to Section 1.5 below, PDC shall provide County with financing for relocation of the Hawthorne Bridge off ramp, as such relocation is further described in Exhibit A attached hereto and incorporated herein by this reference (the “Ramp Relocation Project”), in an amount not to exceed nine million dollars (\$9.0 million) (the “PDC Financing”). The PDC Financing may only be used to pay costs of the Ramp Relocation Project that relate directly to improvements located within the boundaries of the Downtown Waterfront Urban Renewal Area, as reflected in Exhibit A (the Downtown Waterfront Urban Renewal Area lies to the west of the boundary identified in Exhibit A), and that are a permissible use of tax increment revenues derived under ORS Chapter 457. For purposes of this Agreement, the foregoing costs include a contribution, in an amount up to 2% of the PDC Financing (the “RACC Contribution”), to the Regional Arts and Culture Council for public art, as required by Chapter 5.74 of the Portland City Code. If County uses part of the PDC Financing to cover soft costs of the Ramp Relocation Project, the proportion of the soft costs covered by the PDC Financing shall not exceed the proportion of the hard costs of the Ramp Relocation Project covered by the PDC Financing. Any other use of the PDC Financing must be approved in advance and in writing by PDC.
- 1.2 Completion of Ramp Relocation Project.** County shall commence the Ramp Relocation Project within five years of the Effective Date and upon commencement will diligently pursue construction of the Ramp Relocation Project until it is complete. County is solely responsible for costs of the Ramp Relocation Project in excess of the PDC Financing. County shall comply with all applicable laws in its construction of the Ramp Relocation Project. Specifically, but without limiting the generality of the preceding sentence, County shall comply with the prevailing wage laws, as applicable, and work with the Portland Bureau of Planning, the Portland Parks and Recreation Department and the Portland Office of Transportation to obtain the necessary entitlements and approvals for the Ramp Relocation Project.
- 1.3 Completion of Courthouse Project.** The Ramp Relocation Project is intended, in part, to make the Redevelopment Property available for construction of the new Courthouse and County currently intends to construct the new Courthouse on the Redevelopment Property. But County may, instead, after completion of the Ramp Relocation Project, sell or otherwise dispose of the Redevelopment Property in order to obtain another site for the new Courthouse provided that (a) the proceeds of such sale or other disposition (including the value of any in-kind consideration received) are used to acquire another site for the new Courthouse or to develop the new Courthouse on another site and (b) the Redevelopment Property is put to a taxable use. County shall use its best efforts to obtain the necessary entitlements to construct the new Courthouse, either on the Redevelopment Property or on an alternative site as described above, within five years of the Effective Date and to obtain the necessary financing and complete construction of the new Courthouse as soon as reasonably possible thereafter; provided, however, that County’s failure to obtain such entitlements or financing shall not be considered a breach of this Agreement if County has used its best efforts to obtain them. County is solely responsible for the costs of constructing the new Courthouse.
- 1.4 Disbursement of PDC Financing.** Subject to satisfaction of the conditions precedent set forth in Section 1.5 below, PDC shall disburse the PDC Financing for the Ramp Relocation Project as follows: PDC shall withhold the estimated RACC Contribution of \$180,000, pending final determination of the amount of the PDC Financing and the required RACC Contribution, and shall disburse the remaining balance of the PDC Financing (\$8,820,000) to County in a single lump sum after County’s presentation to

PDC of an invoice therefor. Upon final determination of the amount of the PDC Financing and the required RACC Contribution, PDC shall pay the required RACC Contribution to RACC from the funds withheld and in accordance with PDC practice.. If any withheld funds remain after paying the required RACC Contribution, PDC shall disburse those funds to County, upon presentation to PDC of an invoice therefor, to the extent of any eligible Ramp Relocation Project costs not covered by prior disbursements of the PDC Financing. County invoices shall be submitted in an original and two copies to:

Peter Englander
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97204

Pending its use on the Ramp Relocation Project as permitted by this Agreement, County shall place the PDC Financing disbursed to County under this Agreement in a segregated interest bearing account consistent with County's cash management policies for similar funds. All interest on such funds while held by County shall accrue to the County except as provided in Article IV.

1.5 Conditions to PDC Financing. PDC's financing for the Ramp Relocation Project, and the disbursement of such financing to County, is conditioned on each of the following:

1.5.1 PDC has received sufficient proceeds from a line of credit established by the city of Portland for the Downtown Waterfront Urban Renewal Area to permit PDC, in the reasonable exercise of its administrative discretion, to make the payment. PDC anticipates that sufficient proceeds from the line of credit will be available no later than January 30, 2008.

1.5.2 PDC has received from County a budget for the Ramp Relocation Project, in form and substance satisfactory to PDC, that identifies at least \$9 million in Ramp Relocation Project costs that can be covered by the PDC Financing, as described in Section 1.1.

1.5.3 PDC has received from County a timeline for obtaining the necessary entitlements and financing to construct the Courthouse.

1.5.4 County is not in breach of any material term or provision of this Agreement.

ARTICLE II - MORRISON BRIDGEHEAD PROPERTIES

As partial consideration for PDC's agreement to provide the PDC Financing for the Ramp Relocation Project and with recognition that timely and appropriate sale and private redevelopment of the Morrison Bridgehead Properties will both provide revenue to the County to construct the new Multnomah County Courthouse and further the urban renewal objectives of the Downtown Waterfront Urban Renewal Plan, County shall work jointly with PDC to offer the Morrison Bridgehead Properties for sale and redevelopment by the end of March 2008 or as soon thereafter as is reasonably possible. The County's and PDC's work with respect to the Morrison Bridgehead Properties shall include, but not necessarily be limited to, the following:

2.1 Development Solicitation. PDC and County shall jointly prepare criteria for disposition and redevelopment of the Morrison Bridgehead Properties. The criteria shall give

preference to redevelopment proposals that make maximum use of the Morrison Bridgehead Properties site, that propose quality office, retail, or residential uses, or a mixture of those uses, that enhance the viability of the downtown retail core, that enhance the connectivity between the downtown retail core and the waterfront, that create tax revenue and that have aggressive development timelines. After PDC and County have reached agreement on the criteria, PDC will prepare an appropriate development solicitation document (a Request for Proposals, Request for Qualifications, or other appropriate development solicitation tool) that reflects the agreed-to criteria, for review and approval by County. The development solicitation document shall provide for a proposal review, evaluation and selection process that includes substantial PDC participation while making clear that there are no TIF funds or County funds available for redevelopment of the Morrison Bridgehead Properties. The development solicitation document shall further provide that any alteration to the County's Morrison Bridge, including off ramps and appurtenances, required for any proposed project shall be subject to County approval and shall be done at no cost to the County. After County approval of the development solicitation document, the solicitation document shall be issued in the County's name but with the solicitation process administered by PDC on behalf of County. PDC's administration of the development solicitation process shall include, but not necessarily be limited to, dissemination of the solicitation document consistent with standard PDC practice, facilitation of meetings contemplated by the solicitation documents, response to questions regarding the solicitation (after consultation with County), receipt of the proposals, facilitation of the proposal review, evaluation and selection process, and notification of the results of the solicitation.

2.2 Selection of Development Proposal. PDC acknowledges that final approval of the selection of a development proposal received in response to the development solicitation rests with the County, in County's sole discretion. Nevertheless, County agrees to consider in good faith the development proposal, if any, recommended for selection in accordance with the proposal review, evaluation and selection process specified in the development solicitation document, provided that the recommended proposal provides for payment to County of the appraised value of the properties for their highest and best use on terms acceptable to the County in its sole discretion, does not obligate the County to incur any costs related to the proposed development, and does not unreasonably delay closing of the sale of those properties. For purposes of this Agreement, the appraised value of the Morrison Bridgehead Properties shall be determined through an appraisal process mutually acceptable to PDC and County. If none of the proposals received in response to the development solicitation is acceptable to both PDC and County, then PDC and County shall negotiate in good faith to reach agreement on an amendment to this Article II to achieve their joint disposition and redevelopment objectives for the Morrison Bridgehead Properties. If, under the circumstances described in the preceding sentence, PDC and County are not able to reach agreement on an amendment to this Article II, then PDC and County shall have no further obligations under this Section 2.2 or Section 2.3 and County may proceed with a sale or disposition of the Morrison Bridgehead Properties in its discretion.

2.3 Negotiation and Preparation of Disposition and Development Documentation. If a development proposal is selected and approved in accordance with Section 2.2, PDC, with the cooperation and assistance of County, shall negotiate and draft appropriate disposition and development documentation for County's consideration (the "Development Agreement"). County agrees and acknowledges that PDC shall have principal control of the negotiation and approval of terms in the Development Agreement related to the redevelopment aspects of the transaction. PDC agrees and acknowledges that County shall have principal control of the negotiation and approval of terms in the

Development Agreement related to the sale of the Burnside Bridgehead Properties to the developer, including but not limited to the sale price and payment terms. Notwithstanding the foregoing, neither Party shall be required to execute the Development Agreement or any other agreement, document or instrument that is not, in form and substance, satisfactory to that Party. Each Party shall be responsible for making its own determination that the Development Agreement or other agreement, document or instrument is, in form and substance satisfactory to it, without relying on any representation, warranty or statement of the other Party, except to the extent, if any, expressly set forth in the Development Agreement or other agreement, document or instrument. If PDC, County and the proposed developer are not able to reach agreement on the terms of a Development Agreement, then PDC and County shall negotiate in good faith to reach agreement on an amendment to this Article II to achieve their joint disposition and redevelopment objectives for the Morrison Bridgehead Properties. If, under the circumstances described in the preceding sentence, PDC and County are not able to reach agreement on an amendment to this Article II, then PDC and County shall have no further obligations under this Section 2.3 and County may proceed with a sale or disposition of the Morrison Bridgehead Properties in its discretion.

ARTICLE III - OTHER REDEVELOPMENT COOPERATION

As further consideration for PDC's agreement to provide the PDC Financing for the Ramp Relocation Project, County shall work jointly with PDC on other potential redevelopment projects as follows:

- 3.1 **South Hawthorne Bridgehead.** If County declares the County-owned property immediately to the south of the Relocation Property (the eastern half and the northern 95 feet of the western half of the block bounded by SW 1st Avenue, SW Naito Parkway, SW Jefferson Street, and SW Madison Street and otherwise described as Lots 1-4, and 8 and the north 45 feet of lot 7, Block 8, Portland) surplus, County shall, if requested by PDC, negotiate in good faith with PDC to reach agreement on a joint effort to offer that property for redevelopment in a manner similar to that of Morrison Bridgehead Properties, described in Article II above.
- 3.2 **Hooper Detox Center.** County shall actively support either (a) the refurbishment and rehabilitation of the Hooper Detox Center located at 20 NE Martin Luther King, Jr., Blvd (the "Hooper Detox Center Property") or (b) the development of a replacement detox facility at another location in the Central Eastside Urban Renewal Area. County shall consider the possibility of co-locating health or other appropriate County services at the Hooper Detox Center or replacement facility. County's agreement to provide active support does not constitute a commitment to provide any financing for refurbishment or relocation of the Hooper Detox Center. Although this Agreement does not constitute a PDC commitment to provide such financing, PDC is currently contemplating providing up to \$2 million in financial assistance for refurbishment and rehabilitation of the Hooper Detox Center at the current site or for the development of a replacement facility at an alternate site in the Central Eastside Urban Renewal Area.
- 3.3 **Hawthorne Bridge Shop.** County shall include PDC in planning discussions regarding the future of the County Bridge Shop site under the Hawthorne Bridge.
- 3.4 **Possible Hawthorne Bridgehead Urban Renewal Area.** County and PDC shall discuss the creation of a limited urban renewal area to leverage the new development in the

vicinity of the Redevelopment Property to assist in the development of a new Multnomah County Courthouse.

ARTICLE IV – RECAPTURE OF PDC FINANCING

County shall not be required to repay the PDC Financing except as follows:

- 4.1 **Unexpended Funds.** If any portion of the PDC Financing disbursed to County remains unexpended at completion of the Ramp Relocation Project, County shall promptly repay such portion to PDC, together with interest earned on such portion from the investment of such portion pursuant to Section 1.4 above.
- 4.2 **Impermissible Use of PDC Financing.** If any portion of the PDC Financing disbursed to County is used in a manner not permitted by this Agreement, County shall, upon PDC's demand, repay such portion to PDC, together with interest earned on such portion from the investment of such portion pursuant to Section 1.4 above.
- 4.3 **Disposition of Redevelopment Property.** If, without prior written approval by PDC, County sells the Redevelopment Property, or otherwise disposes of the Redevelopment Property, or an interest therein, in a manner inconsistent with the development of the new Courthouse on the Redevelopment Property, and uses the proceeds of such sale or disposition (including the value of any in-kind consideration received) for a purpose other than to acquire another site for the new Courthouse or to develop the new Courthouse on another site, then County shall, upon PDC's demand, repay to PDC the lesser of (a) the proceeds received by County through such sale or disposition (including the value any in-kind consideration received), (b) the entire amount of the PDC Financing, or (c) such lesser amount as PDC may require in its discretion. County shall also pay PDC interest earned on the foregoing amount from the investment of such amount pursuant to Section 1.4 above.

ARTICLE V – RECORDS, INSPECTION AND REPORTING

- 5.1 **Records and Inspection.** County shall maintain all fiscal and other records pertinent to this Agreement or to the Ramp Relocation Project for at least three (3) years following completion of the Ramp Relocation Project. County shall maintain all fiscal records relating to this Agreement and the Ramp Relocation Project in accordance with generally accepted accounting principles and in a manner that clearly documents when and how the PDC Financing was used. In addition, County shall maintain all other records pertinent to this Agreement in such a manner as to clearly document its performance hereunder. County shall make any or all of the foregoing records available to PDC and its representatives, as PDC may reasonably request from time to time, to enable PDC to perform examinations and audits and make excerpts and transcripts, provided that any such examinations and audits shall be at PDC's sole expense. In addition, County shall permit PDC and its representatives to inspect the Ramp Relocation Project, and the work performed as a part thereof, as PDC may reasonably request from time to time.
- 5.2 **Reporting.** County shall inform PDC in writing when the Ramp Relocation Project is completed. Promptly after completion of the Ramp Relocation Project, County shall provide to PDC documentation of the use of the PDC Financing, including copies of paid invoices, accounting records and other documents that PDC may reasonably request. County shall inform PDC in writing when the necessary entitlements for the construction

of the Courthouse have been obtained, when financing has been arranged, and when the construction of the Courthouse is completed.

ARTICLE VI - TERMINATION

This Agreement shall terminate upon the later of completion of the Ramp Relocation Project or completion of construction of the new Courthouse, as evidenced by County's receipt of a Certificate of Occupancy for the new Courthouse. Sections 3.2, 3.3, 5.1 and 8.4 shall survive termination of this Agreement.

ARTICLE VII – COMPLIANCE WITH PREVAILING WAGE LAWS AND PDC POLICIES

PDC and County agree and acknowledge that, as a condition of the PDC Financing, the Ramp Relocation Project must comply with the following policies:

- 7.1 **Workforce Training & Hiring/Good Faith Opportunity Review.** The Ramp Relocation Project must comply with County's Good Faith Efforts Program requirements, set forth in Exhibit B attached hereto and incorporated herein by this reference, and County's Workforce Training & Hiring program requirements, set forth in Exhibit C attached hereto and incorporated herein by this reference. As applicable, County shall include the foregoing requirements in its contracts related to the Ramp Relocation Project and cause its contractors to comply with such requirements.
- 7.2 **Prevailing Wage Laws.** The Parties agree and acknowledge that the Ramp Relocation Project is a "public work" as that term is defined in ORS 279C.800(5). As a result, state prevailing wage law will apply to the Ramp Relocation Project and County shall comply with state prevailing wage law in connection with the Ramp Relocation Project.

ARTICLE VIII - GENERAL

- 8.1 **Notices.** Any notice provided for under this Agreement shall be in writing and deemed delivered five days after mailing, postage prepaid and properly addressed to the Party to be notified. Unless a Party changes its address by giving notice to the other party as provided herein, notices shall be addressed as follows:

If to PDC:
Eric Jacobson
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209

If to County:
Pam Krecklow
Multnomah County
401 N Dixon
Portland, OR 97227

- 8.2 **Agreement Administration.** Eric Jacobson is the PDC project staff person assigned to this Agreement and is authorized to administer it on behalf of PDC. Pam Krecklow is the County project staff person assigned to this Agreement and is authorized to administer it on behalf of County.
- 8.3 **Signs and Publicity.** During construction of the Ramp Relocation Project, County, at its expense, shall post at a visible location near the project a sign identifying PDC as

providing project financing. The location and format of the sign shall be approved by PDC prior to its display.

- 8.4 Indemnification.** To the extent permitted by Oregon Law and within the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), County shall defend (if requested by PDC), indemnify and hold harmless PDC and PDC's commissioners, officers, agents, and employees against all claims, demands, actions and suits (and liability arising therefrom) brought against any of them arising from or related to the Ramp Relocation Project except that County shall not be required to indemnify PDC or its commissioners, officers, agents or employees to the extent of their fault or negligence. To the extent permitted by Oregon Law and within the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), PDC shall defend (if requested by County), indemnify and hold harmless County and County's commissioners, officers, agents, and employees against all claims, demands, actions and suits (and liability arising therefrom) brought against any of them arising from or related to actions by PDC under Article II of this Agreement except that PDC shall not be required to indemnify County or its commissioners, officers, agents or employees to the extent of their fault or negligence. PDC's indemnification obligation under this Section 8.4 shall terminate on the date County enters into a Development Agreement with a developer as contemplated by Section 2.3 hereof.
- 8.5 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon. Any suit for enforcement shall occur, if in the state courts, in the Multnomah County Circuit Court, or if the action must be brought in federal courts, in the United States District Court for the District of Oregon.
- 8.6 Assignment.** Neither Party shall assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due under this Agreement, without the prior written approval of the other Party. This Agreement shall bind and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.
- 8.7 No Third Party Beneficiaries.** This Agreement is between the Parties and creates no third-party beneficiaries. No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.
- 8.8 Relationship of Parties.** The parties intend that the relationship created by this Agreement is that of independent contracting parties. Neither party hereto shall be deemed an agent, partner, joint venturer, or related entity of the other by reason of this Agreement.
- 8.9 Time is of the Essence.** Time is of the essence of this Agreement.
- 8.10 Counterparts.** This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on both Parties, notwithstanding that both Parties are not signatories to the same counterpart. \
- 8.11 Material Breach.** If County or PDC breaches any material term or provision of this Agreement (other than a breach described in Sections 4.2 or 4.3 in which case Section 4.2 or 4.3 shall govern, as applicable) and such breach remains uncured 60 days after written notice thereof to the breaching party, then the non-breaching party may pursue any right or remedy that it may have, under this Agreement, at law or in equity, for the breach of this Agreement, including but not limited to, monetary damages.

8.12 Integration, Amendment and Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. NO AMENDMENT, CONSENT OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THE PARTIES, BY THE SIGNATURES BELOW OF THEIR AUTHORIZED REPRESENTATIVES, ACKNOWLEDGE HAVING READ AND UNDERSTOOD THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed effective as of the date first set forth above, by their duly authorized representatives.

CITY OF PORTLAND, ACTING BY AND THROUGH THE PORTLAND DEVELOPMENT COMMISSION

By: _____
Bruce A. Warner, Executive Director

Date: _____

Approved as to Form:

By: _____
David J. Elott, PDC Assistant General Counsel

MULTNOMAH COUNTY, OREGON

By: _____
Ted Wheeler, Chair

Date: _____

Reviewed:

AGNES SOWLE, COUNTY ATTORNEY FOR
MULTNOMAH COUNTY

By: _____
John S. Thomas
Deputy County Attorney

EXHIBIT A

HAWTHORNE BRIDGE OFF RAMP RELOCATION PROJECT

Project Scope: Realign the Hawthorne Bridge's West bound Main Street bridge approach that currently bisects Block 7.

Project Elements:

- Lower by 7' to 9' SW Naito Parkway between SW Madison and SW Salmon Streets
- Demolition of existing Main Street Ramp that spans SW Naito and roadway on Block 7
- Demolition of vacated Madison Street roadway on Block 8
- Removal of partial concrete deck on NE pedestrian and Bike ramp
- Construction of new realigned ramp structure that connects to existing Hawthorne Bridge off ramp, spans over SW Naito, and aligns with unused City of Portland Right of Way for SW Main Street
- Construct new roadway with retaining walls on existing unused City of Portland Right of Way for SW Main Street that connects new ramp to existing SW Main Street at SW First Avenue.
- Widen existing NE pedestrian and bike ramp to 12'
- Project will require closure of west bound traffic lanes for 9 to 12 months. Pedestrian and bicycle traffic would be limited in areas of construction only

Estimated Project Costs:

\$10.7 million

Estimate provided by David Evans and Associates and includes 15% for construction engineering, 12% for design engineering, and 35% for construction contingencies. The high percentage used for construction contingencies is intended to cover the unknown cost items expected to arise during detailed design development.

Estimated Project Timeline:

29 months

Estimated provided by David Evans and Associates and is for a traditional design, bid, and construct contracting method. Timeline could be increased with use of other less traditional construction methods such as design/build.

**EXHIBIT B
GOOD FAITH EFFORTS PROGRAM REQUIREMENTS**

MULTNOMAH COUNTY GOOD FAITH EFFORT PROGRAM

BIDDER CHECKLIST

This Checklist helps identify documents that must be submitted by the Bidder to establish that Good Faith Efforts (GFE) have been made. However, it remains the responsibility of the Bidder to determine all the documents that must be submitted. For purposes of this document, "submitted" means in the physical possession of Multnomah County Central Procurement & Contract Administration (CPCA). All forms can be provided electronically upon request; OR available to download on the CPCA website:

<http://www.multcopurch.org/>

DUE DAY OF BID OPENING BY 4:00PM – FROM ALL BIDDERS

- FORM 1 – Multnomah County - Good Faith Effort Program - Subcontractor and Self-Perform Work List -**
Provide all required information:
(The completed Form 1 must be submitted even if you intend to self-perform ALL the work on this project.)
 - ✓ Bidder Name, Bid Number, Bid Amount, and Project Name
 - ✓ List ALL GFE Divisions of Work as being self-performed, subcontractor identified, or undetermined
 - ✓ List ALL subcontractor information by GFE Division of Work

DUE DAY AFTER BID OPENING BY 4:00PM - FROM THE APPARENT LOW BIDDER

- FORM 2 – Multnomah County - Good Faith Effort Program - MWESB Contact / Bids Received Log -**
Provide all required information.
- Copy of solicitation letter or FAX sent to M/W/ESB subcontractors**

DUE AFTER AWARD OF CONTRACT FROM CONTRACTOR

- FORM 3 – Multnomah County - Subcontractor Payment and Utilization Report**

Submit all required information to:

Multnomah County CPCA; 501 SE Hawthorne Blvd., Suite 400; Portland, OR 97214

Questions:

Please call Multnomah County CPCA at (503) 988-5111

Fax: (503) 988-3252

MULTNOMAH COUNTY GOOD FAITH EFFORT PROGRAM REQUIREMENTS

1. PROGRAM DESCRIPTION

- A. Multnomah County has a compelling government interest to ensure that contracts provide employment opportunities for minority, women, and emerging small businesses in order to address historical underutilization. Therefore, prime contractors are required to submit documentation showing that Good Faith Efforts (GFE) have been made to contract with M/W/ESB subcontractors.
- B. On projects estimated at \$200,000 and above, this program:
- 1) Is used to evaluate the Good Faith Efforts (GFE) required of all bidders
 - 2) Is intended to assist the County in recording subcontractor utilization on its projects
 - 3) Requires contractors to perform GFE on ALL of their subcontracting opportunities (regardless of value)
 - 4) Is adopted for reasons other than the prevention of bid shopping

2. PRE-BID REQUIREMENTS

- A. Bidders are required to make good faith efforts to contract with M/W/ESB subcontractors for each GFE Division of Work identified in these documents unless the work will be self performed by the bidder. A list of M/W/ESB contractors specializing in the GFE Divisions of Work identified for subcontracting on this project is included. A bidder may not use a subcontractor to perform any division of work unless the bidder has made good faith efforts as required by these specifications with respect to that division of work.
- B. The GFE Divisions of Work are areas where the County believes that subcontracting opportunities may exist. Bidders shall use the GFE Divisions of Work, which are different than the divisions of work that might be outlined in the technical specifications.
- C. Bidders are not required to contact M/W/ESB subcontractors for any GFE Division of Work that will be performed by bidders' own forces. If a bidder indicates that it will self perform work in a particular division of work, after bids are due a bidder may add a subcontractor in that division of work so long as bidder complies with the requirements of paragraph 5 below.
- D. These requirements are contractual obligations and are included in the construction contract. Failure to comply may result in a finding of breach of contract, disqualification of the bidder to bid on future contracts, or a claim for damages.
- E. **Who to contact**

For *each* GFE Division of Work identified in these documents (see 2 A) that will be performed by a subcontractor, Bidders must contact:

- 1) Each M/W/ESB subcontractor that attended the pre-bid meeting (if one was held) that specializes in a GFE Division of Work that will be subcontracted. If the M/W/ESB identified itself only as another potential prime contractor at the pre-bid meeting, however, that M/W/ESB need not be contacted. A list of subcontractors attending the meeting will be provided to bidders.
AND
- 2) In addition, the Bidder shall contact a minimum of five (5) M/W/ESB Subcontractors listed in each GFE Division of Work that will be subcontracted. If there are less than 5 Subcontractors

listed for a particular GFE Division of Work, Bidders shall contact **all** of the Subcontractors that are listed in that GFE Division of Work.

F. **When to contact**

Bidder shall make the first contact with each M/W/ESB subcontractor at least seven (7) calendar days before the bid opening. For example, if bids are opening on Thursday, the first contact shall be on or before the Thursday of the preceding week; if on Tuesday then on or before the Tuesday of the preceding week.

G. **How to contact**

- 1) Bidders shall contact M/W/ESB subcontractors by letter or fax to advise them of potential subcontracting opportunities.
- 2) Bidders shall follow up with telephone calls to each M/W/ESB subcontractor contacted to determine if a bid will be submitted or if further information is required. A subcontractor need not be contacted if that subcontractor responds to the first contact with a statement that the subcontractor will not bid on this project or if a subcontractor has already submitted a sub-bid.

H. **What information must be provided**

Bidders shall ensure that M/W/ESB Subcontractors have an equal opportunity to compete for work by having the same information as other subcontractors. Bidders shall inform M/W/ESB Subcontractors of the date and time that sub-bids are due.

3. **OPTIONAL GOOD FAITH EFFORTS**

A. Bidders should also consider efforts such as:

- 1) Advertisements in community based newspapers (i.e. Skanner, Asian Reporter, El Hispanic, etc.)
- 2) Letters to Minority and Women Community Organizations
- 3) *Alternative methods of participation in Minority, Women or Emerging small businesses through arrangements such as joint ventures, negotiated subcontract agreements and competitive bids.*
- 4) Purchase of Construction materials and equipment from M/W/ESB suppliers.

4. **SUBMISSION OF REQUIRED DOCUMENTATION**

A. FORM 1 (Subcontractor and Self-Perform Work List) DUE DAY OF BID OPENING BY 4:00PM – FROM ALL BIDDERS

Bidders shall submit Form 1 with their bid or by 4:00 p.m. on the day the bid is due. Otherwise, the bid will be rejected.

Form 1 shall list **ALL** Subcontractors to be used on this contract regardless of the dollar amount. (This is more than what is required by the State of Oregon's subcontractor disclosure form). If this bid includes bid alternates for additional work, Bidders shall list **ALL** first-tier Subcontractors who will be used if the County elects to do the additional work.

Bidders shall list any GFE Divisions of Work they intend to self-perform and separately list any GFE Divisions of Work where the identity of the subcontractor who will perform the work is undetermined at bid time.

B. FORM 2 (Log) & SOLICITATION LETTER DUE DAY AFTER BID OPENING BY 4:00PM FROM APPARENT LOW BIDDER

- 1) **FORM 2 (Contact / Bids Received Log):** The apparent low Bidder shall submit Form 2, (or equivalent), by 4 p.m. the next business day following bid submission.
- 2) **Solicitation letter or fax:** The apparent low Bidder shall submit one copy of the letter or fax sent to M/W/ESB Subcontractors to solicit bids for this project. If more than one form of letter or fax was sent, submit a copy of each form sent.
- 3) Failure to timely submit Form 2 will result in bid rejection. Failure to timely submit the solicitation letter or fax may result in bid rejection, in the County's discretion. Contractors shall submit additional information upon request if the County believes it needs to clarify the Bidder's Good Faith Efforts.
- 4) If for any reason the apparent low Bidder is not awarded the contract or its bid is rejected, the next apparent low bidder shall submit Form 2 and its solicitation letter or fax by 4:00 p.m. the next business day following the County's notification.

C. FORM 3 (Subcontractor Payment and Utilization Report) DUE MONTHLY FROM CONTRACTOR

The selected Contractor shall list the contract amounts and payment amounts to all Subcontractors (including MBE/WBE/ESB Subcontractors) and second tier Subcontractors on Form 3.

5. ADDITION OR REPLACEMENT OF SUBCONTRACTORS AFTER BIDS ARE DUE

- A. The successful bidder will not be permitted to add or replace an M/W/ESB subcontractor after bids are due without the consent of the CPCA Manager. The CPCA Manager must be notified in writing immediately upon the need to substitute an M/W/ESB contractor.
- B. No subcontractor may be **added** or **replaced** after the bid is due unless the bidder complies with the requirements of ORS 279C.585 and makes good faith efforts to contract with an M/W/ESB for the work to be performed. Documentation of good faith efforts is required and must be submitted to the CPCA Manager prior to adding or replacing a subcontractor.

6. ENFORCEMENT AFTER CONTRACT AWARD

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

In the event of a breach of contract, the Owner may take any or all of the following actions:

A. Withholding Progress Payments

The Owner may withhold all or part of any progress payment(s) until the Contractor has remedied the breach of

contract. In the event that progress payments are withheld, the contractor shall not be entitled to interest on said payments. If a subcontractor(s) is responsible for noncompliance with the Good Faith Effort Program requirements, the Owner may choose to withhold only their portion of the progress payment.

B. Liquidated Damages – GFE Program Non-Compliance

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for the Contractor's failure to comply with the Good Faith Effort Program. The parties further agree that it is difficult, if not impossible; to determine the cost to the owner when contracting opportunities are not provided. Therefore, if the Contractor fails to comply with the Good Faith Effort provisions of this contract, the Contractor agrees to pay the sum of \$1,000 for each violation. These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with this or other provisions of the contract.

C. Liquidated Damages - Delay

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

D. Possible Debarment

Failure to comply with the requirements of this portion of the contract may lead to the Contractor's disqualification from bidding on and receiving other Owner contracts.

E. Other Remedies

The remedies that are noted above do not limit any other remedies available to the Owner in the event that the Contractor fails to meet the requirements of the Good Faith Effort Requirements.

7. REVIEW OF RECORDS

- A. In the event that the Owner reasonably believes that a violation of the requirements of this section has occurred, the Owner is entitled to review the books and records of the Contractor and any subcontractors employed on the project to which the requirements of this section are applicable to determine whether such a violation has or has not occurred.
- B. In the event that the Contractor or any subcontractor fails to provide the books and records for inspection and copying when requested, such failure shall constitute a material breach of this contract and permit the imposition of any of the remedies noted in Section 6 above, including the withholding of all or part of any progress payment(s).

ATTACHMENTS:

- FORM 1:** Multnomah County - Good Faith Effort Program - **Subcontractor and Self-Performed Work List**
- FORM 2:** Multnomah County - Good Faith Effort Program - **M/W/ESB Contact / Bids Received Log**
- FORM 3:** Multnomah County - **Subcontractor Payment and Utilization Report**

All forms are available on the CPCA website:

<http://www.multcopurch.org/>

**MULTNOMAH COUNTY
GOOD FAITH EFFORT (GFE) PROGRAM
SUBCONTRACTOR and SELF-PERFORMED WORK LIST
(FORM 1)**

NOTE: IF THE BIDDER IS NOT USING ANY SUBCONTRACTORS ON THIS PROJECT,
WRITE THE WORDS "SELF PERFORMING ALL WORK" ON THE FORM.

Bidder Name: _____ Total Bid Amount: _____

Bid Number: _____ Project Name: _____

The bidder must identify all GFE Divisions of Work (these may be different from the Technical Spec. Divisions of Work) it will self-perform. **GFE Divisions of Work not being self-performed require Good Faith Efforts.** If the Bidder has not determined who will perform a GFE division of work at bid time, list that GFE Division of work as "Undetermined". GFE Divisions of Work that are subcontracted must be documented and submitted according to GFE Program Requirements.

<u>GFE DIVISIONS OF WORK – BIDDER WILL SELF-PERFORM</u> <i>(GFE not required)</i>	<u>GFE DIVISIONS OF WORK – UNDETERMINED WHO WILL PERFORM</u> <i>(GFE required unless self-performed)</i>

LIST BELOW ALL SUBCONTRACTORS including those M/W/ESBs, that you intend to use on the project. For each subcontractor, include the address, telephone #, CCB #, Fax #, the type of work to be done and the dollar amount of the subcontract regardless of the amount of the contract. If this bid includes alternates for additional work, follow the same instructions as above.

<u>GFE DIVISIONS OF WORK BIDDER WILL SUBCONTRACT (GFE required)</u>					
ALL SUBCONTRACTORS (Please Print) Please use <i>correct legal name</i> of subcontractor	GFE DIVISION OF WORK (Painting, electrical, landscaping, etc.) Use GFE DOW list provided. Do not use the technical section DOW's.	DOLLAR AMOUNT OF SUBCONTRACT	Certified Subcontractor MBE/WBE/ESB		
			Check box <input checked="" type="checkbox"/>		
			MBE	WBE	ESB
Name Address City/St/Zip Phone# CCB# Fax#					
Name Address City/St/Zip Phone# CCB# Fax#					
Name Address City/St/Zip Phone# CCB# Fax #					

Name Address City/St/Zip Phone# CCB# Fax #					
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Failure to submit this form by 4:00 p.m. on the day the bid is due shall result in the bid being non-responsive and the bid will be rejected.

MULTNOMAH COUNTY
 GOOD FAITH EFFORT PROGRAM
 M/W/ESB CONTACT / BIDS RECEIVED LOG
 (FORM 2)

Bidder Name: _____ Bid Number: _____

Bidders shall record their contacts with MBEM/BE/ESB Subcontractors through use of this log. All columns must be completed. Additional forms may be copied if needed.

NAME OF M/W/ESB SUBCONTRACTOR	GFE Divisions of Work Use list provided for areas of subcontracting. DO NOT USE the Technical Section DOW's.	Date Solicitation Letter / Fax Sent	PHONE CONTACT		BID ACTIVITY			Bid Amount	REJECTED BIDS		Notes
			Date of Call	Person Receiving Call	Will Bid	Bid Received	Bid Used		Reason Not Used If other, explain in Notes >>		
									<input type="checkbox"/> Price <input type="checkbox"/> Scope <input type="checkbox"/> Other		
									<input type="checkbox"/> Price <input type="checkbox"/> Scope <input type="checkbox"/> Other		
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									<input type="checkbox"/> Price <input type="checkbox"/> Scope <input type="checkbox"/> Other		

INSTRUCTIONS FOR COMPLETING THE MONTHLY SUBCONTRACTOR PAYMENT AND UTILIZATION REPORT

1. **BID NUMBER:** Enter Multnomah County Bid Number
2. **CONTRACT NUMBER:** Indicates the contract number for this project, as assigned by the County.
3. **PRIME CONTRACTOR:** Indicate the name of the prime contractor.
4. **PRIME CONTRACT AMOUNT:** Indicate the total dollar amount of the prime contract.
5. **REPORT DATES:** Indicate the beginning and ending date for the calendar month for which the report is submitted.
6. **PROJECT NAME:** Indicate the project name as indicated on the contract documents.
7. **PROGRESS REPORT NUMBER:** Enter report No.1 for the first report submitted and subsequent numbers for reports submitted thereafter. Check box if the report is the Final report for the project.
8. **ALL SUBCONTRACTOR NAMES:** Names of all subcontractors (not suppliers) listed on Form 1.
9. **CHECK IF SECOND TIER SUBCONTRACTOR.**
10. **ORIGINAL SUBCONTRACT AMOUNT:** Indicate the dollar amount for each subcontract at time of award.
11. **AMENDED SUBCONTRACT AMOUNT:** This amount should be the total dollar value (original subcontract amount plus any additions or deletions) of the subcontract.
12. **PAYMENT AMOUNTS AND DATES MADE, FOR MONTH:** Please list any payment amounts for the month, and the dates the payments were made.
13. **TOTAL RETAINAGE HELD, IF ANY:** If the prime is holding retainage, enter the total amount of the retainage held for the reporting period.
14. **TOTAL PAYMENTS, TO DATE:** This amount should be the total dollar amount paid-to-date to the subcontractor.
15. **SUBCONTRACTOR NAME:** Please list any subcontractors not appearing on original sub plan.
16. **NATURE OF WORK:** Briefly describe subcontractors work (i.e. Landscaping, Electrical, Paving, etc.).
17. **STATUS:** Indicate the appropriate M/W/ESB status of each subcontractor listed (i.e. MBE, WBE, ESB). **Note:** Designations should be consistent with how firms were certified by the state at time of contract award. Only one designation may be used for credit and will be applied accordingly. Leave blank for non-certified firms.
18. **CHECK IF SECOND TIER SUBCONTRACTOR.**
19. **SUBCONTRACT AMOUNT:** Indicate the dollar amount of the subcontract.
20. **PAYMENT AMOUNTS AND DATES.** Insert the amounts paid to the subcontractor during the period covered by this report. If any amount paid is less than the amount requested by the contractor, explain the difference in the space at the bottom of the form. Use additional pages if necessary to provide a complete explanation.
21. See #13.
22. See #14.

EXHIBIT C
WORKFORCE TRAINING AND HIRING PROGRAM REQUIREMENTS
Workforce Training & Hiring Program Specifications

Contractor Checklist

**This program applies to prime contracts of \$200,000 or more
and subcontracts of \$100,000 or more.**

The following Workforce Training & Hiring Requirements are a summary of the key contractual obligations of contractors working on Multnomah County funded public works projects, development agreements or Enterprise Zone benefits. It is the contractor's responsibility to read and fully understand this section of the bid specifications and to comply with all provisions of the program, regardless of whether they appear on this checklist. The City administers this program for Multnomah County, Portland Development Commission, Tri-Met, Portland Community College and the Housing Authority of Portland.

CHECKLIST:

1. Prime Contractor:

- **A. Submit Projected Hiring Needs form (Exhibit 2) to Owner within 15 calendar days after bid opening or prior to contract award, whichever occurs first.**
- **B. Ensure compliance by all subcontractors with subcontracts of \$100,000 or more, and provide them with a copy of the Workforce Program section of the specifications.**

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

- **Submit Projected Hiring Needs form (Exhibit 2) prior to beginning work on the project or within 5 days of signing subcontracts, whichever occurs first.**

3. Prime and all subcontractors with contracts of \$100,000 or more must:

- **A. Throughout the duration of the project:** Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the prime and subcontractors of \$100,000 or more are worked by state-registered apprentices.
- **B. Before starting work on this project:** Submit proof of registration as a Training Agent with the Bureau of Labor & Industry, Apprenticeship & Training Division (ATD) in each trade employed. For assistance, contact the City Workforce Program (503) 823-6850 or ATD (503) 731-4072.
- **C. Throughout the duration of the project:** Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of Multnomah County, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources, as described in this section of the specifications.
- **D. Throughout the duration of the project:** Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
- **E. When an apprentice is hired:** Notify the City Workforce Program.
- **F. By the 5th of each month to the Owner's Project Manager and the City Workforce Program, submit Monthly Employment Report (Exhibit 4).**

Please consult the Workforce Training & Hiring Requirements for additional information or call the City Workforce Program at (503) 823-6850 if you have questions.

WORKFORCE TRAINING AND HIRING PROGRAM REQUIREMENTS

I. PURPOSE OF WORKFORCE SPECIFICATIONS

A. General Program Description

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

The City/County Workforce Training & Hiring Program ("Workforce Program") is administered for the City of Portland, Portland Development Commission (PDC), Multnomah County, and Tri-Met, and the Housing Authority of Portland by the City of Portland, Bureau of Purchases. The Workforce Program applies to all prime Contracts of \$200,000 or more and to each subcontractor having a subcontract of \$100,000 or more on the project. The Contractor and all subcontractors are encouraged to fulfill the program requirements even if their contracts are less than these amounts.

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

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

For purposes of the Workforce Specifications, the following definitions shall apply:

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

"Contractor" shall mean the bidder to whom a contract is awarded.

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

"Owner" shall mean the government agency that awarded the contract, or leveraged public involvement in the project through a loan, development agreement or Enterprise Zone program.

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

B. Organization of Program Requirements

The Workforce Specifications are divided into several parts.

Section II refers to the action that bidders must take in order to be eligible for an award of a contract.

Section III lists the actions that must be taken by the Contractor.

Section IV refers to remedies available to the Owner if a Contractor fails to meet the requirements of the Workforce Specifications.

Section V refers to the Owner's ability to monitor compliance with the Workforce Specification by examination of contractor and subcontractor records.

II. ACTION REQUIRED OF ALL BIDDERS

- A. All Bidders shall thoroughly read this Workforce Program specification and commit to perform all requirements described herein. The Apparent Low Bidder shall submit Exhibit 2, Projected Hiring Needs within fifteen (15) calendar days after bid opening or prior to award of the contract, whichever occurs first. The Exhibit shall provide complete information. The Projected Hiring Needs must demonstrate how the workforce on this project will fulfill all program requirements, including utilization of apprentices.

In the event that the Apparent Low Bid is nonresponsive, the next lowest Bidder considered for contract award shall submit Exhibit 2 within fifteen (15) days after bid opening or within two (2) days of notification by the Owner, whichever occurs last.

For PDC development agreements, Exhibit 2 shall be submitted by the prime Contractor within fifteen (15) calendar days after its selection.

III. ACTIONS NECESSARY TO SATISFY CONTRACT REQUIREMENTS

A. Make Reasonable Efforts to Have Diverse Workforce

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

The Contractor shall demonstrate that it is an EEO employer with a diverse workforce, or that it is making serious efforts to become one, as follows:

1. The Contractor and each affected subcontractor shall submit a copy of its "A" level EEO certification letter from the City of Portland EEO Program. An "A" level EEO certification demonstrates that the Contractor is not underutilized by

trade, race, and gender in its companywide workforce based on availability data from the 1990 census and the City's EEO statistical summary; or

2. Provide written documentation of its good faith recruitment efforts. If the Contractor is unable to verify that it employs a diverse workforce based on the standards described in the paragraph above, then the Contractor must follow the process for recruiting apprentices and journey workers described in Sections III F and III G of this specification. This process is considered by the Owner to be the minimum effort to recruit a diverse workforce.

NOTE: A Contractor seeking an "A" level EEO certification may wish to consider utilizing the Recommended Good Faith Recruitment & Retention Practices, attached as Exhibit 1.

3. The failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall not excuse the Contractor's obligations under this section of the specifications.

B. Ensure Compliance By Certain Subcontractors

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

C. Register As A Training Agent

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

1. Only training programs approved by and registered with BOLI may be used to fulfill training requirements under the workforce specifications.
2. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts, which are not apprenticeable occupations, such as truck driving, are exempt from the training requirements.
3. Exemptions to the training requirements must be approved by the Owner in writing prior to starting work on the project. Written requests for exemptions related to the training requirements will be considered by the Owner during the

course of the project, only for extreme circumstances, and must also be approved in writing. All requests to exempt all or any portion of the work on a project shall be submitted to the Bureau (14) days before any work on the project begins. Requests for exemptions should be directed to the City Workforce Training & Hiring Program Compliance Specialist for the project.

Requests for exemptions shall be approved by the City Workforce Training & Hiring Program Coordinator.

D. Submit Documentation

The contractor shall submit documentation regarding the following subjects to the Owner. The Owner's failure to object to documentation submitted by the Contractor or subcontractor shall not relieve them of the requirements of this section.

1. Training Agent Status

The Contractor and all required subcontractors must submit proof to the Workforce Program that they are registered Training Agents with BOLI prior to beginning any work on the project.

2. Subcontractor Workforce Information

Exhibit 2, Projected Hiring Needs, must also be submitted for each subcontractor required to register as a Training Agent prior to beginning work on the project or within 5 calendar days after the execution of the applicable subcontract, whichever occurs first. Work by a subcontractor shall not begin prior to submission of such documentation.

3. Contractor and Subcontractor Reports After Work Begins

The Monthly Employment Report (Exhibit 4) must be submitted by the prime Contractor and any subcontractor having a subcontract of \$100,000 or more to the Workforce Program by the 5th day of each month, with a copy to the Owner's project manager. The Contractor shall follow the submittal instructions on the report form. All hours subject to prevailing wage rates on public projects, in addition to supervisors, foremen, and superintendents, shall be reported on Exhibit 4.

4. A copy of certified payroll reports may be requested by the Owner to verify information in the Report. The payroll reports shall be provided within 7 days of the date when the contractor receives the request for the payroll.

E. Use of Apprentices

The Contractor shall:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the project by the prime contractor, and subcontractors with

subcontracts of \$100,000 or more, are worked by state registered apprentices throughout the duration of the project. Contractors and subcontractors shall fulfill the 20% apprenticeship hour's requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program.

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

F. Use Apprenticeship Programs for Referrals

A Contractor that does not have an "A" level EEO certification must follow all of these steps in seeking apprentice referrals:

1. Contact the appropriate apprenticeship program or dispatch center to request apprentices who are enrolled in the apprenticeship program; and
2. Request female or minority apprentices from the union or open shop apprenticeship program if such an action will help meet Equal Employment Opportunity (EEO) certification requirements or remedy historical underutilization in the Contractor's workforce; and
3. Keep a written record of the request for apprentices, including name of contact person at apprenticeship program, phone, fax, date, time, job location, start date, etc.; and
4. Make reasonable and necessary efforts to recruit apprentice applicants from community organizations/recruitment resources, and seek to enroll them into an apprenticeship program, if the apprenticeship program is unable to supply an apprentice (or if no women or minorities are available to meet EEO needs), and if

the program is open for applications or allows direct entry from community resources.

NOTE: Contractors may contact the Workforce Program for assistance regarding the apprentice referral process, or may utilize Exhibit 3, Request For Apprentice form, to document their efforts. A list of community organizations/recruitment resources is also available. Instructions are on the last page of this section of the specifications.

G. Utilize Unions and Community Organizations When Recruiting For Any Positions on this Project

When hiring, requesting, recruiting, or replacing workers for this project, the Contractor that does not have an "A" level EEO certification shall:

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

Documentation will be requested by the Owner from Contractors that are not "A" level EEO certified if it appears that the Contractor has not made reasonable and necessary efforts to acquire a diverse workforce. When requested, the Contractor shall provide that documentation to the Workforce Program within 7 calendar days.

IV. CONSEQUENCES OF NONCOMPLIANCE WITH WORKFORCE REQUIREMENTS

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

In the event of a breach of this section of the contract, the Owner may take any or all of the following actions:

A. Withholding Progress Payments

The Owner may withhold all or part of any progress payment or payments until the Contractor has remedied the breach of contract. In the event that progress payments are withheld, the contractor shall not be entitled to interest on said payments.

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

B. Retain sums as damages for failure to comply with Workforce Specifications

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for the Contractor's failure to comply with the Workforce Specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Owner when workforce opportunities are not provided.

Therefore, if the Contractor fails to comply with the workforce provisions of this contract, the Contractor agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours or until the breach of contract is remedied. Damages may be assessed for failure to meet the 20% apprenticeship training requirements by the prime and each required subcontractor in each trade employed. Damages will be calculated based on the training hours not provided to the Owner at a rate of \$250 per day. For example, if the Contractor was required to provide 200 hours of carpenter training (20% of 1,000 total carpenter hours), and the Contractor only provided 150 training hours, then the difference (50 hours) is divided by 8 (one day of work) to determine number of days of undelivered training. ($50/8 = 6.25 \times \$250 = \$1,562.5$).

Damages may also be assessed for failure to fulfill the inclusive hiring process described in sections IIIF and IIIG.

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

C. Retain sums as liquidated damages for delay

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

D. Notification of Possible Debarment

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

E. Other Remedies

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

V. REVIEW OF RECORDS

In the event that the Owner reasonably believes that a violation of the requirements of this section has occurred, the Owner is entitled to review the books and records of the Contractor and any subcontractors employed on the project to whom the requirements of this section are applicable to determine whether such a violation has or has not occurred.

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

ATTACHMENTS:

Exhibit 1: Recommended Recruitment & Retention Practices

Exhibit 2: Projected Hiring Needs

Exhibit 3: Request For Apprentice form

Exhibit 4: Monthly Employment/Training Report

Exhibit 5: Apprenticeship Ratio Data

Community Organizations/Recruitment Resources

A list of community resources that assist with construction recruitment is available upon request by calling the Workforce Program at (503) 823-6850.

The list is also available by calling the City of Portland Purchasing Buyline at (503) 823-6855. Then choose Fax On Demand and order document 20307. This service is available 24 hours daily.

Questions Regarding Apprenticeship:

Bureau of Labor & Industries

Apprenticeship & Training Division

800 N.E. Oregon St. # 32

Portland, OR 97232

(503) 731-4072

Questions Regarding City/County

Workforce Training and Hiring Program

City of Portland/Bureau of Purchases

1120 S.W. Fifth Ave., Room 750

Portland, OR 97204

(503) 823-6850 or (503) 823-6855

Fax: (503) 823-5539.

EXHIBIT 1

RECOMMENDED GOOD FAITH RECRUITMENT & RETENTION PRACTICES

A. Recruitment Efforts

Good faith recruitment efforts are those intense, aggressive, sincere, and result-oriented actions taken by the Contractor designed to accomplish the objectives of the City Workforce Training & Hiring, and Equal Employment Opportunity Programs. These efforts may assist the Contractor in achieving an "A" level EEO certification. Good faith recruitment efforts include, but are not limited to:

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

B. Retention Efforts

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

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

EXHIBIT 2

PROJECTED HIRING NEEDS

This form must be completed thoroughly by the prime and each subcontractor with a subcontract of \$100,000 or more.

Please state how you plan to perform the work on this project, indicating the number of journey workers and apprentices by trade. This workforce plan must demonstrate how your company will fulfill all Workforce Program requirements, including utilization of apprentices. **Complete all columns, with project-specific information.**

BID# _____ PROJECT NAME: _____
 Federal ID # _____ Prime Contractor Subcontractor

Trade	Total # of Journey Workers	# of Apprentices	# of New Positions (indicate Journey or Apprentices)	Anticipated Start Date	Estimated Total Hours (all workers in each trade)

Please list the apprentices who will work on this project. If you need more space, attach an additional sheet of paper. The Workforce Program compliance staff must approve all apprentices on the project.

Name of Apprentice	Trade	Race	Gender	Date of Hire	Staff use only (Initial: Approved Notified, Docs)

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

Person in your company who does hiring: _____

COMPANY: _____ CCB# _____ PHONE: _____ FAX: _____

Are you a registered Training Agent? Yes No Are you a Union Open Shop contractor?

With which JATCs are you registered to train apprentices? _____

Apprentice committee or union contact person who dispatches apprentices to your company:

Name: _____ Phone: _____ Fax: _____

Name: _____ Phone: _____ Fax: _____

PREPARED BY: _____ / _____

DATE: _____

(sign and print)

Prime contractor must complete and submit to Owner within 15 calendar days after bid opening or prior to award of contract, whichever occurs first.

Subcontractors with contracts of \$100,000 or more must submit prior to beginning work on the project or within five (5) days of signing subcontract, whichever occurs first, to Prime Contractor. **Prime Contractor must submit to:**

Workforce Program, Bureau of Purchases, 1120 S.W. Fifth Avenue #750, Portland, OR 97204
Phone (503) 823-6850 or FAX (503) 823-5539

EXHIBIT 3

Request For Apprenticce

The contractor may use this form to document efforts when recruiting apprentices.

FAX To: _____ /

(Apprenticeship Committee)

(Contact/ Dispatcher)

Fax Number : _____ Number of Pages _____

Request From:

Company Name _____ /

(Registered Training Agent)

(Contact Person)

Phone _____ Fax _____

Date: _____ Time: _____

Apprentice Request:

As a registered Training Agent, I am using this form to request referral of an apprentice for employment with my company in cooperation with the City/County/PDC Workforce Training & Hiring Program. I would like to continue to diversify my workforce. Therefore, please refer ethnic minorities and women for my consideration. If I am unable to receive a referral from my apprenticeship program within a reasonable time, and my apprenticeship program is open for applications or allows direct entry, I may use this form to request a referral to the apprenticeship program from community recruitment resources.

Apprentice referral is needed by this date: _____ Work Starts: _____

Job Site Location: _____ Expected Length of Employment: _____

Project _____ Owner (Multnomah

County) _____

Number of Apprentices: _____

Trade/Occupation: _____

Number of Apprentices: _____

Trade/Occupation: _____

Minimum qualifications (if different from apprenticeship standards): _____

Safety needs: ___ Hard hat ___ Gloves ___ Hard-toed boots Other? _____

Please fax this Request For Apprentice form to your apprenticeship committee.

To document your good faith efforts, copies may also be sent to:

City Workforce Training & Hiring

1120 SW 5th Ave. Rm 750

Portland, OR 97204

Phone: (503) 823-6850

FAX: (503) 823-5539

For Apprenticeship Program Only

Please check the appropriate box and fax to City Workforce Program:

I was able to dispatch an apprentice to the project listed above.

Name of Apprentice: _____ Rae _____ Gender _____

I was unable to dispatch an apprentice to the project listed above because _____

Fax this form with dispatch information to (503) 823-5539. Thank you.

Submit to:

City Workforce Program
Bureau of Purchases
1120 SW 5th Ave #750
Portland, OR 97204
FAX: (503) 823-5539

Send copy to:

Developer and Owner's Project Manager

* Race includes the following minorities:
AA - African American - having origins in any of the black racial groups of Africa;
H - Hispanic American - person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin;
A - Asian American - having origins in any of the original people of the Far East, Southeast Asia, Indian subcontinent or the Pacific Islands;
NA - Native American - American Indian or Alaskan Native, having origins in any of the original peoples of North America;
C - Caucasian.

Signature: _____

Print Name: _____ Title: _____

NOTE: Apprentice hours spent in the classroom during the course of the project can be submitted as hours worked.

EXHIBIT 5

APPRENTICESHIP RATIO DATA*

The following data may be used to determine the ratio of apprentices on a jobsite in proportion to journey-level workers on the jobsite. The ratios that apply are those listed in the standards of the apprenticeship committee to which the Training Agent (Contractor) is a member. If the applicable trade is not listed, contact the Bureau of Labor and Industries at (503) 731-4072 or your apprenticeship

*Ratios may change pursuant to actions taken by the Oregon State Apprenticeship & Training Council/BOLI. For the purposes of this contract,

the ratios approved by BOLI on the date the bid is advertised shall prevail.

<u>TRADE</u>	<u>APPRENTICE TO JOURNEY RATIO*</u>		
	<u>1st Apprentice</u>	<u>2nd Apprentice</u>	<u>Max</u>
Asbestos/Insulation Workers	1/1	1/4	
Brick/Marble/Terrazzo/Tile Finisher	1/1	1/3	
Bricklayer/Masonry	1/1	1/5	
Carpenter (Portland)	1/1	1/1 (1/5 union)	Additional apprentices authorized a 1/5 (union). Open shop and City of Portland industrial 1/1 for first three apprentices; 1/5 after.
Carpet Installers/Floorlayers	1/1	1/3	
Cement Masons	1/2	1/3	
Drywall Applicator (Ext/Int Specialists)	1/3	1/5	
Drywall Finisher (Taper)	1/1	1/3	
Electricians			
Inside	1/1	1/3 union (1/2 open shop)	
Outside	1/6	1/6	
Limited Energy/Limited Residential	1/1	1/1 union (1/2 open shop)	
Construction Lineman	1/1	1/1	
Limited Maintenance	1/1	1/2	
Stationary Engineer	1/1	1/3	
Elevator Contractor	1/1	1/1	1/1 for first two apprentices; 1/2 after
Environmental Control System (HVAC)	1/1	1/1	
Glass Installer (Glazier)	1/1	1/3	
Hod Carrier/Mason Tender	1/1	1/5 union (1/3 open shop)	
Iron Worker	1/1	1/6	
Laborer (Construction)	1/1	1/5 union (1/3 open shop)	
Landscape Laborer/Technician	1/1	1/5 union (1/3 open shop)	
Maintenance Mechanic	1/1	1/3	
Millwright	1/5 union (1/3 open shop)	1/5 union (1/3 open shop)	
Operating Engineer (Heavy)	1/1-4	2/5-9	3/10-19 4/20-24 5/25-29 30 or more 1/for each 5 additional operators
Painting & Sandblasting	1/1	1/3	
Painting (Traffic Control)	1/1	1/4	
Pile Drivers	1/3	1/5	
Pipe Fitters/Steam Fitters	1/1	1/1	1/1 for first two apprentices; 1/3 after

Plasterers	1/1	1/3	
Plumber	1/1	1/1	1/1 for first two apprentices, 1/3 after
Roofer	1/1	1/1	
Scaffold Erector	1/1	1/1	1/1 for first five apprentices, 1/5 after
Sheet Metal Worker	1/1	1/1	1/1 for first two apprentices, 1/3 after
Sheet metal Worker (Residential)	1/1	1/1	
Sign Maker/Erector	1/1	1/1	
Sprinkler Fitter	1/1	1/1	
Structural Fabricator	1/1	1/3	
Terrazzo Worker	1/1	1/3	
Tile/Marble Setter	1/1	1/3	