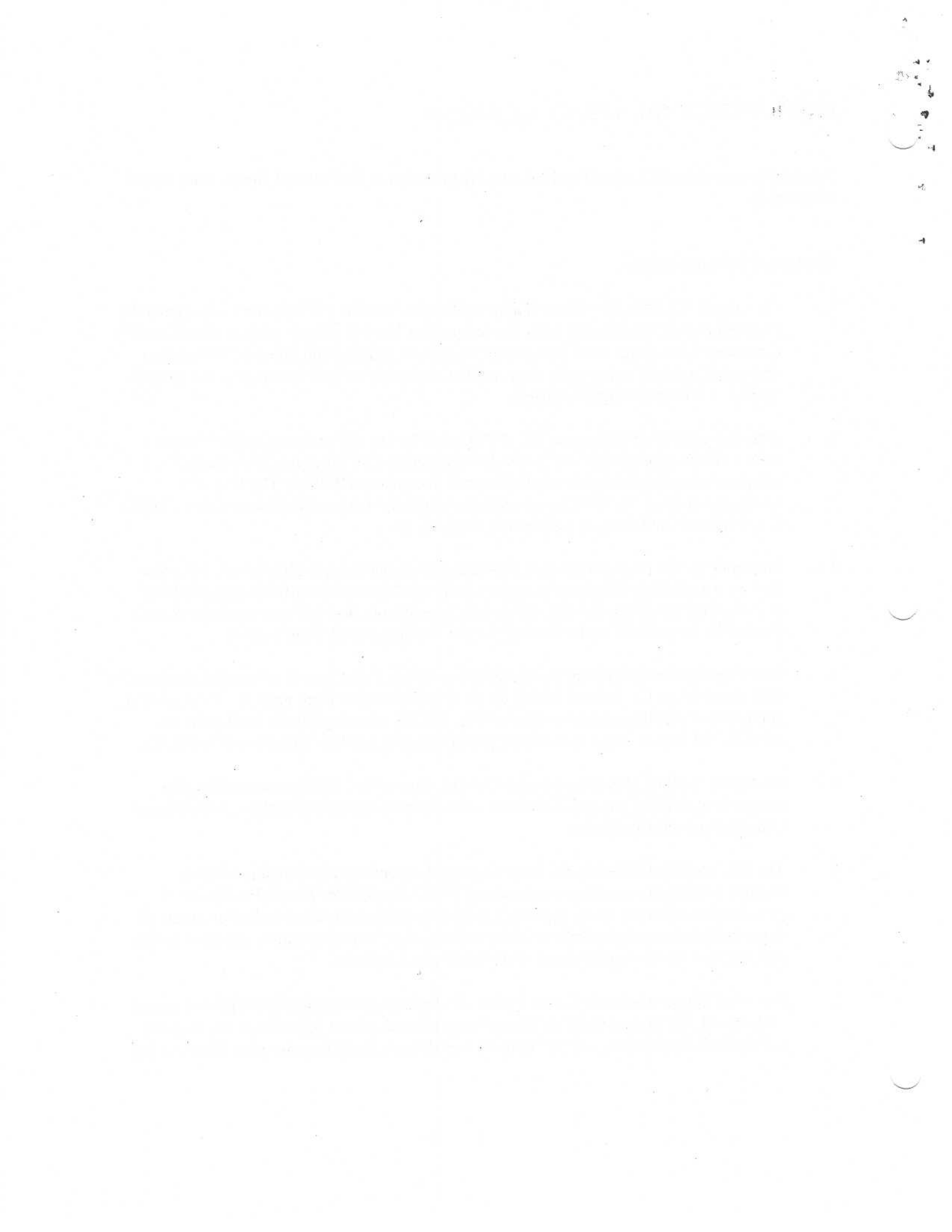


ORDINANCE No. 179223 AS AMENDED

*Authorize contract with Kiewit Pacific Company to construct the Portland Aerial Tram project.
(Ordinance)

The City of Portland ordains:

1. On August 13, 2003, City Council approved Ordinance No. 177795, which exempted the Portland Aerial Tram project from the competitive low bid process and permitted the City to procure Tram Equipment from a tram equipment supplier and select a Construction Manager/General Contractor to construct the proposed Tram by means of a competitive Request for Proposal (RFP) process.
2. After the passage of Ordinance No. 177795, the Bureau of Purchases and the Portland Office of Transportation (PDOT) developed a Request for Proposal (RFP) for the selection of a Construction Manager/General Contractor (CM/GC). The RFP was advertised on May 10, 2004, and responsive proposals were received from Kiewit Pacific Co., Hoffman-Andersen, and Stacy and Witbeck, Inc.
3. Proposals for the project were evaluated based on experience, qualifications, and other factors. An evaluation committee appointed by the Commissioner-in-Charge of PDOT evaluated the proposals and interviewed the respondents, and recommended that Kiewit Pacific Co. be retained as the CM/GC for the Portland Aerial Tram project.
4. Based on the selection committee's recommendation, City Council endorsed the selection of Kiewit Pacific Co. as the CM/GC for the Portland Aerial Tram project. On October 6, 2004, City Council approved Ordinance No. 178798 selecting Kiewit Pacific Co. as CM/GC and authorizing a contract for preconstruction services with Kiewit Pacific Co.
5. On March 9, 2005, City Council approved Ordinance No. 179095, reauthorizing the competitive bidding exemption for the Portland Aerial Tram in accordance with State of Oregon procurement statutes.
6. The City and Kiewit Pacific Co. have negotiated acceptable construction contract conditions and a construction cost proposal of \$17,815,950 for Kiewit Pacific Co. to provide all machinery, tools, apparatus, materials, equipment, labor and other means of construction necessary to perform and complete the work in the manner specified and in accordance with the requirements of the Contract Documents.
7. Funds for the contract with Kiewit Pacific Co. have been identified and approved as part of the South Waterfront Central District Project Development Agreement, as amended, and through the formation of the Portland Aerial Tram Local Improvement District. City



Council authorized the formation of the Portland Aerial Tram Local Improvement District through Ordinance No. 178675 on August 18, 2004.

8. Funds are available in the Transportation Operating Fund, AU 159, Center Code 15942123, Account Code 563000, Project Number 37385.

NOW, THEREFORE, the Council directs:

- a. The Mayor and City Auditor are hereby authorized to execute a Contract with Kiewit Pacific Co. for the purposes described in Section 1, in the amount of \$17,815,950, subject to approval by the City Attorney's office.
- b. The City's Project Manager is authorized to approve an increase in the contract amount for construction not to exceed \$1,946,885 that will be held in reserve as contingency for additional work due to changed conditions and/or additional work not contemplated in the Contract Documents.
- c. The Mayor and Auditor are hereby authorized to draw and deliver checks payable to Kiewit Pacific Co., chargeable to the Transportation Operating Fund, AU 159, Object Code 630.

Section 2. The Council declares that an emergency exists because delays in the construction of the Portland Aerial Tram Project will adversely affect development progress in South Waterfront and will force the City to miss contractual deadlines for project delivery; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, APRIL 28, 2005

Mayor Tom Potter
Prepared by: Matt Brown:slg
April 7, 2005
Kiewit Ordinance 040605.doc

GARY BLACKMER
Auditor of the City of Portland
By /S/ Susan Parsons

DEPUTY

BACKING SHEET INFORMATION

AGENDA NO. 400-2005

ORDINANCE/RESOLUTION/COUNCIL DOCUMENT NO. 179223 AS AMENDED

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
ADAMS	X	
LEONARD	X	
SALTZMAN	X	
STEN	X	
POTTER	X	

MAINTENANCE/WARRANTY BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact a surety business in the State of Oregon, as surety, are held and firmly bound unto the CITY OF PORTLAND, a municipal corporation of the State of Oregon, in the penal sum of \$ _____ Dollars (\$ _____), lawful money of the United States of America, for the payment whereof well and truly to be made, we and each of us, jointly and severally, bind ourselves, our and each of our heirs, executors, administrators successors and assign, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH:

THAT WHEREAS the Principal did on the (_____), enter into Contract with the City of Portland for _____, that was completed on (_____), which requires a two-year Maintenance and Warranty as described in Section 107.14 of the City of Portland Standard Construction Specifications, and which Contract hereby is made a part hereof as if fully copies herein;

NOW THEREFORE, if the Principal herein shall faithfully and truly observe the terms, provisions, conditions, stipulations, directions, and requirements of said contract and shall in all respects, whether the same be enumerated herein or not, faithfully comply with the same and shall assume the defense of indemnify and save harmless the City of Portland, its officers, agents, and employees from all claims, liabilities, loss, damage or injury which may have been suffered or claimed to have been suffered to persons or property directly or indirectly resulting from or arising out of the operations or conduct of said Principal or any subcontractor in the performance of the work under said contract and shall indemnify and make whole the City for any injury or damage to any street, highway, avenue, or road or any part thereof, resulting from the operations or conduct of said Principal or any subcontractor in connection with performance or conduct of the work under said contract, and shall in all respects faithfully keep and observe all of said terms, provision, conditions, stipulations, directions, and requirements, then this obligation is void, otherwise, it shall remain in full force and effect.

WITNESS our hand and seals this _____ day of _____, 20____

Contractor

BY: _____

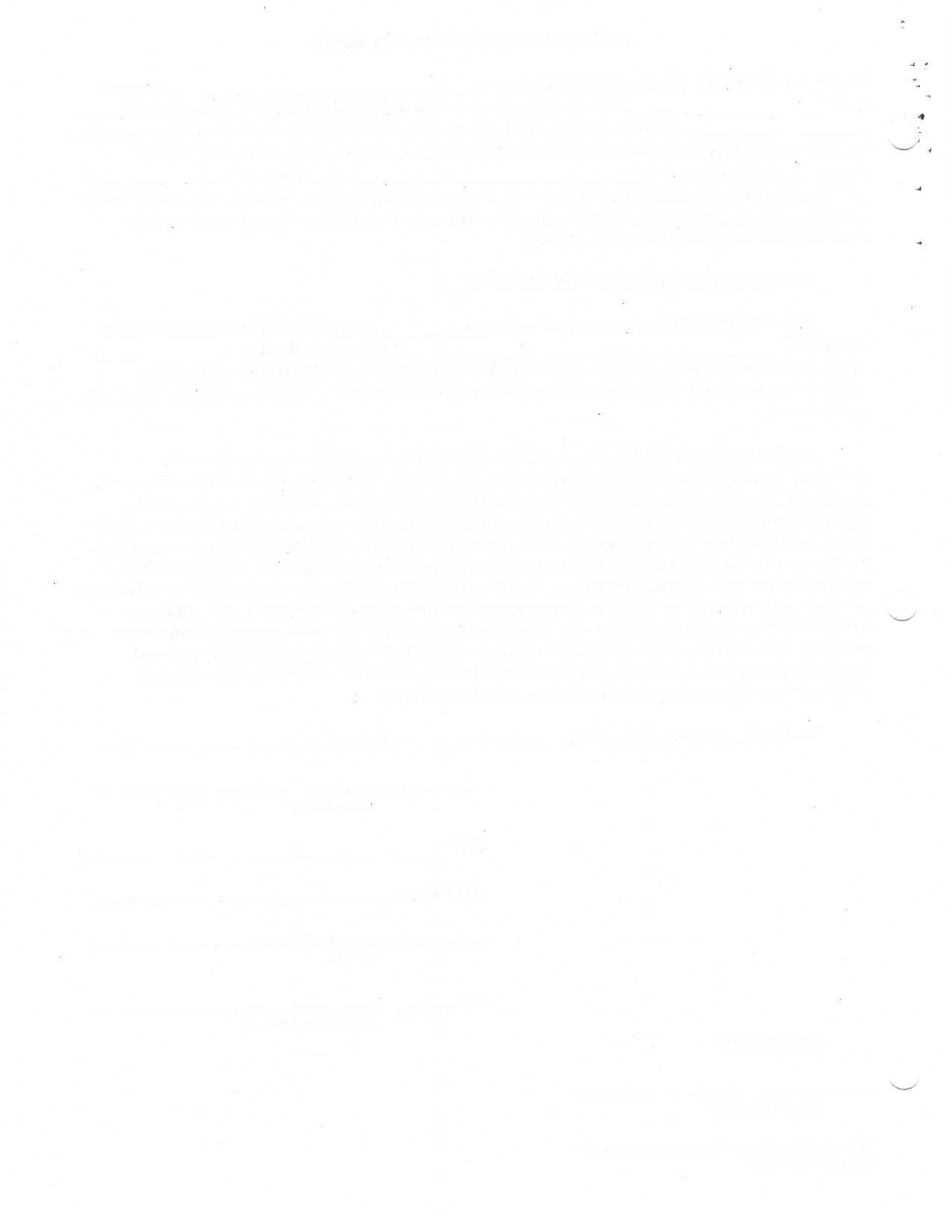
TITLE: _____

Surety

By: _____
Attorney-In-Fact

APPROVED

City Attorney



PORTLAND AERIAL TRAM PROJECT

Exhibit D: Milestones and Project Schedule * (data date: 4/08/05, run date: 4/21/05)

1. City Council Ordinance authorizes execution of Kiewit Pacific Co. and Doppelmayr-CTEC contracts April 28, 2005
2. City executes Kiewit Pacific Co. and Doppelmayr-CTEC contracts May 5, 2005
3. City issues Kiewit Pacific Co. and Doppelmayr-CTEC Notice to Proceed May 5, 2005
4. City delivers final design documents to Kiewit Pacific Co.
 - a. For excavation/shoring, piling/drilled shafts and concrete foundations bidding May 2, 2005
 - b. For bidding/placement of structural steel mill order May 2, 2005
 - c. Doppelmayr-CTEC final documents for coordination/interface review May 2, 2005
 - d. 100% CDs for review, bid package issuance June 20, 2005
 - e. Overall 100% CD set Issued for Construction July 20, 2005
5. City provides Kiewit Pacific Co. access to begin site construction activities at:
 - a. Lower Station June 6, 2005
 - b. Tower June 6, 2005
 - c. Upper Station June 6, 2005
6. Kiewit Pacific Co. releases Upper Station to Doppelmayr-CTEC:
 - a. For provisional installation of Tram structure/materials (approx. 2 days) Feb 20, 2006
 - b. For completion of installation and alignment of Tram structure/materials
During this period, Kiewit Pacific Co. and subcontractors shall have concurrent access to complete work. April 24, 2006
7. Kiewit Pacific Co. releases Lower Station to Doppelmayr-CTEC for Tram installation activities, including the basement level for all Tram system mechanical, electrical, and machinery elements. During this period, Kiewit Pacific Co. and subcontractors shall have concurrent access to complete work. March 6, 2006
8. Kiewit Pacific Co. releases Tower to Doppelmayr-CTEC for Tram installation activities April 27, 2006
9. Kiewit Pacific Co. provides primary access to the alignment and structures to Doppelmayr-CTEC for rope pulling and completion of Tramway system installation. During this period, Kiewit Pacific Co. and subcontractors shall have concurrent access to complete work. May 15, 2006
10. Doppelmayr-CTEC and Kiewit Pacific Co. have concurrent access to complete all work. Sept 15, 2006
11. Kiewit Pacific Co. and Doppelmayr-CTEC substantial completion Sept 30, 2006
12. Kiewit Pacific Co. final completion Nov 30, 2006

* The City and Contractor acknowledge that compliance with the above milestones and underlying schedule depends upon factors over which Contractor has limited control. Following completion of 100% Construction Documents and bidding of all work, the City and Contractor will assess and update Project Schedule. If necessary, City will issue a contract adjustment for time and/or contract amount to either revise the milestones or accelerate work to meet the above stated milestones.



PORTLAND AERIAL TRAM PROJECT

Exhibit E: Amendments to: City of Portland, Oregon Bureau of Environmental Services, Water and Transportation

STANDARD SPECIFICATIONS, General Conditions of the Contract for Construction Division 1 (A), January 2002 Edition, (Revised: July 2004)

102 INSTRUCTIONS REGARDING BIDDING

Delete the first paragraph.

102.01 EXAMINATION OF CONTRACT, SITE OF WORK AND SUBSURFACE DATA

Paragraph A is deleted in its entirety and revised to read:

- A. The Contractor shall carefully examine the sites (including material sites) of the proposed Work, the Plans, Special Provisions, Specifications, Addenda, and Contract forms. The submittal of a Guaranteed Maximum Price shall be conclusive evidence that the Contractor has made such examinations and understands all the requirements for the performance of the completed Work.

Paragraph B is deleted in its entirety and revised to read:

- B. The Contractor shall determine the methods, materials, labor, and equipment required to perform the completed Work and shall reflect their cost in the cost of the Work.

Paragraph C is deleted in its entirety and revised to read:

- C. If the Owner has made an investigation of the site specifically for the proposed Work, boring log data, soil sample test data, subsurface data, or any historical data accumulated by the Owner's Representative will be made available for inspection by the Contractors at the Owner's office or another location. The Owner is under no obligation to search its records for other data that may or may not be helpful for the Contractor's inspection, and the parties agree that no Claim for additional compensation may be made if such additional test data is not provided. It is mutually recognized and agreed to by all parties that:
1. When any of this data is included in the Contract Documents, it is for the purpose of disclosing design information and is not a part of the Contract.
 2. The subsurface investigations made by the Owner are for the sole purpose of obtaining data necessary for planning and designing the Project.
 3. The Owner assumes no responsibility whatsoever for the sufficiency or completeness of the data furnished with respect to meeting the needs of the Contractor in planning his work as it was obtained for an entirely different purpose.

4. The Owner warrants that the data represents with reasonable accuracy the conditions and materials found in the specific borings at the time the borings were made. The Owner does not warrant that the condition, materials, or proportions of materials at any other locations, or between the borings, is identical to what was found.
5. The Owner makes no representation or warranty expressed or implied that:
 - a) The ground at the location of the boring has not been physically disturbed or altered after the boring was made.
6. The disclosure of subsurface information from the Owner's Representative is solely for the convenience of the Contractor and shall not relieve the Contractor of any risks or of any duty to make his own examinations and investigations as required by this Subsection or any other responsibility under the Contract.
7. The Contractor acknowledges that it has ascertained the nature and location of the Work, and that it has investigated and assured itself as to the general and local conditions that can affect the Work or its cost. The Contractor also acknowledges that it is satisfied as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered so far as this information can be reasonably ascertained from an inspection of the site, including exploratory work done by the Owner, as well as from the Contract Documents and any data that may be provided or made available. Failure of the Contractor to take these actions will not relieve it of responsibility for properly estimating the difficulty and cost of successfully completing the Work, or for proceeding to successfully complete the Work without additional cost to the Owner.
8. The Owner assumes no responsibility for conclusions or interpretations made by the Contractor based on the information that the Owner makes available. Statements made by City representatives at the pre-bid or pre-proposal conference or elsewhere are not binding on the City and shall not change the GMP.
9. In the event of a conflict between Codes, industry standards and Reference Specifications, the most stringent requirements apply and Bidders shall submit their Bids based on the most stringent requirements. See Paragraph 106.02 E.

102.02 AMOUNT OF WORK TO BE DONE

Paragraph B is deleted in its entirety and revised to read:

- B. The estimate of quantities of work to be done under Unit Price Bids is approximate and is given only as a basis of calculation for comparison of Bids and award of the Contract. The Owner does not guarantee that the amount of work to be performed will be the same as the amount estimated in the Contract Documents.

Paragraph C is deleted in its entirety.

Paragraph D is deleted in its entirety and revised to read:

- D. The Contractor shall inform the Owner of any obvious (patent) conflicts in the Contract prior to establishment of the Cost of the Work as required by Subsection 104.02.

102.04 COMPLIANCE WITH M/W/ESB PROGRAMS

Delete the section in its entirety and revise to read:

The Contractor shall comply with all City programs contained elsewhere in the Contract Documents that concern M/W/ESBs, including those regarding the substitution of Contractors during performance of the Work.

102.05 NON-COLLUSION AFFIDAVIT

Delete the section in its entirety.

Contractor signed and delivered a non-collusion affidavit for the Project as part of its response to the Request for Proposals.

102.06 AWARD OF CONTRACT

Delete the section in its entirety and revise to read:

The City's Purchasing Rules shall govern the Award of any Contract by the Owner.

102.07 BIDDING BASED ON CONTRACT DOCUMENTS

Delete the section in its entirety and revise to read:

The Cost of the Work shall be based on the requirements of the Contract Documents. The Contractor shall not estimate the Cost of the Work anticipating that any portion of the Contract Documents will be changed, modified or not enforced. It is understood and agreed by both parties that the plans and specifications (Exhibits B and C) will not be complete at the time of Contract execution, and that the plans and specifications, when completed, will be substituted within the Contract for the purposes of establishing the final Cost of the Work. However, if the Contractor believes that any portion of the Contract Documents conflicts with, or is at variance with, any law, it shall immediately notify the Owner in writing of the Project so that the Owner can analyze the situation before the Cost of the Work is established.

102.08 INSURANCE

Paragraph E is deleted in its entirety and revised to read:

- E. Builder's Risk Coverage - If the Contract Amount exceeds \$750,000 the Contractor shall obtain Builder's Risk Insurance and provide the City with a certificate for approval showing that such coverage has been obtained. The cost of Builder's Risk Coverage, as required by the Owner, shall be reimbursed by the Owner as part of the Cost of the Work.

104.02 PRECEDENCE OF CONTRACT DOCUMENTS/CONFLICTS

The Section is deleted in its entirety and revised to read:

- A. Patent Conflicts in the Contract Documents, or obvious omissions, are ones that should have been discovered before 100% Construction Documents were provided to the Contractor. In such a situation, the Contractor has a duty to inquire of the Owner before incorporating that component into the permanent Work. This permits the Owner to clarify by RFI or written direction what is intended by the Contract. That is particularly true for errors in figures, drawings or Specifications.
- B. If the Contractor fails to bring an obvious or patent conflict or error to the Owner's attention before it submits the final GMP, it has waived its right to additional compensation when the Owner resolves it.
- C. Anything shown on the Plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans, shall be of like effect as if shown or mentioned in both. This does not constitute a conflict, discrepancy or error between the two.
- D. In cases of apparent discrepancies or conflicts between the Plans and the Specifications, the Contractor shall first determine if the matter can be resolved pursuant to the rule stated in B above. If not, the apparent conflict shall be resolved by designating the portion of the Contract Documents that takes precedence over the others. Therefore, when preparing its Bid, or when beginning any portion of the Work, the Contractor shall use the following order of precedence to resolve any apparent conflict:
 - 1. Permits from Outside Agencies required by law
 - 2. Change Orders
 - 3. Contract
 - 4. Special Specifications (Provisions) (Exhibit E - Amendments to Division 1(A))
 - 5. Project Manual (Exhibit B)

6. Plans (Exhibit C)
 7. Information furnished by written notes and/or schedules on drawings
 8. Information provided by lines on drawings
 9. Standard Specifications (Division 1(A))
- E. For known discrepancies the Contractor shall bring any real or perceived discrepancy concerning dimensions, quantities or location between the drawings, details or Specifications to the attention of the Owner's Representative before beginning that portion of the Work.
- F. In the event of any inconsistency in the Drawings and Specifications unless otherwise ordered in writing by the Owner's Representative, the Contractor shall provide an equal quality of Work or materials. This provision shall apply only to inconsistencies in express requirements of the Drawings and Specifications and not the interpretations by the Owner or Architect.

104.04 EXTRA WORK AND CHANGES

The following paragraph is added at the beginning of this Section:

The Contractor is under no obligation to perform new scope beyond the work reasonably defined in the Contract. For the purposes of this section, new scope not reasonably defined in the Contract is work not related to the construction of the tramway facilities or the public areas around them, including any and all architectural finishes specified through the Contract or requested by the Owner. The Contractor has the right to deny new scope not reasonably defined in the Contract without being in material breach or otherwise. Added scope and extra work shall be mutually agreed to by both the Owner and the Contractor before the new work is performed.

104.05 DIFFERING SITE CONDITIONS

Paragraph B is deleted in its entirety and revised to read:

- B. After receipt of the Notice, the Owner's Representative will investigate the conditions encountered by the Contractor promptly. If the Representative finds that the conditions are materially different and cause a material increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an Equitable Adjustment to the Contract will be made under this clause and the Contract modified in writing accordingly. If possible, Owner and Contractor shall agree on the adjustment to be made. If they are unable to agree, the Representative will determine the amount of the Equitable Adjustment and adjust the time to perform if appropriate. If the Representative finds that differing site conditions do not exist, Contractor shall give prompt written notice of his/her disagreement with the Owner's findings and proceed with following the requirements of Section 108.05, 108.06 and 109.17 or as otherwise provided for in this Contract.

105.04 CONTRACTOR'S RESPONSIBILITY FOR WORK

Paragraph C is deleted in its entirety and revised to read:

- C. The Contractor shall repair any damage for which it is financially responsible promptly. If the damage is something for which the Contractor is not financially responsible, the Owner's Representative may direct, through a Change Order, the Contractor to repair the damage.

105.06 NOTIFICATION OF UTILITIES AND AGENCIES FOR STREET CLOSURE

Paragraph B is revised to read:

- B. Contractor shall defend, indemnify and hold the City harmless from any and all claims of damage, including attorney fees and costs, resulting from Contractor's activities if the preceding steps, as outlined in Section 105.06 article A, were not properly taken and/or if the Work was not undertaken properly by the Contractor.

105.07 ACTIONS REGARDING EXISTING IMPROVEMENTS AND UTILITIES

Paragraph E.(5) is deleted in its entirety.

Paragraph I is deleted in its entirety and revised to read:

- I. Owner will require a reasonable amount of time to perform design changes necessitated by conflicting utilities. The Owner has communicated that all utilities will be moved or otherwise will not impact the progress of the Project schedule. Contractor has not allowed for any costs to remove, relocate, realign or abandon utilities for this Project. Any cost or time impacts shall be the basis for equitable adjustment for delays and costs. In addition, Utility owners will require a reasonable amount of time to make necessary Utility relocations if such utilities are responsible for relocation.

Add the following as paragraph J.:

- J. Owner is responsible for all costs and coordination of relocation, realignment, and removals of all utilities within the right-of-way. This does not relieve Contractor from following applicable laws, codes and ordinances with respect to notification prior to proceeding with any excavations within the public right-of-way. Any and all costs, including any fees or permits, associated with the removal, relocation, realignment or use of City Utilities shall be included in the Cost of the Work.

105.08 SURVEY SERVICE

Paragraph C is deleted in its entirety and revised to read:

- C. Work performed by the Contractor without lines and grades having been established by the Owner's Representative and work performed beyond the lines and grades are prohibited. The

Contractor shall remove, replace or correct such work if directed to do so by the Owner's Representative. Contractor has estimated the cost for survey support of the Work. The actual costs for survey shall be reimbursed by the Owner as part of the Cost of the Work.

105.09 PROTECTION OF SURVEY MARKERS

The Section is deleted in its entirety and revised to read:

A. Permanent Survey Markers:

1. Contractor shall notify the Owner's Representative not less than three (3) working days prior to starting work in order that the Representative may take necessary measures to ensure the preservation of survey monuments, stakes, lot stakes and bench marks. Contractor shall not disturb permanent survey monuments, stakes, lot stakes or bench marks without the consent of the Owner's Representative.
2. When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, Contractor shall adjust the monument cover to the new grade.

B. Construction and Survey Markers: Contractor shall preserve construction survey stakes and markers for the duration of their usefulness during construction.

105.10 PROTECTION AND RESTORATION OF PROPERTY

Paragraph D. is deleted in its entirety and revised to read:

- D.** Contractor shall protect, or otherwise replace, all trees not designated for removal, lawns and planted areas within the Right-of-Way or Easements and restore all disturbed areas, by seeding, mulching and providing erosion control as set forth in the Project Manual (Exhibit B).

105.12 FURNISHING TEMPORARY SERVICES AND FACILITIES

Delete Section in its entirety and revise to read:

Contractor shall provide temporary light, power, water and other temporary services or facilities complete with connecting, piping, wiring, lamps and similar equipment as required during construction of the Work, including testing and start up, and remove temporary facilities upon completion. Obtaining permits and bearing the costs of temporary services and facilities will be reimbursed by the Owner as part of the Cost of the Work.

105.17 HAZARDOUS SUBSTANCES ENCOUNTERED DURING CONSTRUCTION AND OTHER ENVIRONMENTAL LAWS

Add the following Paragraph as Paragraph I:

I. In the event the Contractor, during the course of construction or during any other activities authorized under this Contract, should encounter Hazardous Substances not introduced to the Project Site by the Contractor or any forces acting on behalf of the Contractor directly or indirectly in execution of the Contract the Owner shall be named the Generator, the Owner shall arrange for or otherwise be responsible for the transportation of said Hazardous Substances and sign the transport tickets, and the Owner shall select the site for disposal of said encountered Hazardous Substance.

106.04 CERTIFICATIONS AND CONFORMANCE DOCUMENTS

Paragraph A is revised to read:

A. The Contractor shall provide Certifications and Conformance Documents, including any sampling and testing that must be performed in order to achieve certification. Materials, products, parts and pieces of equipment shall not be incorporated into the Work without acceptable certifications or conformance documents. As used in this Subsection, the following definitions are applicable:

107.02 SUBCONTRACTORS

Paragraph D is deleted in its entirety and revised to read:

D. The Contractor will provide the Owner with copies of all its subcontracts, purchase agreements and supply agreements relating to the Work upon request of the Owner within three (3) business days of the request.

107.06 LIABILITY AND INDEMNIFICATION

Add the following as Paragraph E:

E. Neither the Contractor nor its insurer are required to indemnify the City for any claims or losses arising out of death, or bodily injury to persons or property damage caused, in whole or in part, by the negligence of the City and the City's Architect.

107.08 PERMITS

Paragraph A is deleted in its entirety and revised to read:

- A. The Contractor shall be responsible for obtaining any necessary fees, licenses and Permits, and for complying with any Federal, State, and municipal laws, Codes, and regulations applicable to the performance of the Work. The costs for applying for and obtaining any necessary Permits are reimbursable to the Contractor as part of the Cost of the Work.

107.11 OVERTIME WORK

Paragraph B is deleted in its entirety.

107.12 PUBLIC SAFETY AND CONVENIENCE

Paragraph F is deleted in its entirety and revised to read:

- F. Cleanliness: The Contractor shall, on a continuing basis, keep the surfaces of all roadways, sidewalks and other pathways used by the public free of dirt, mud, cold plane grindings, and other matters that the Contractor may place upon the road. The cost of performing such work shall be reimbursed by the Owner as part of the Cost of the Work.

Paragraph G is deleted in its entirety and revised to read:

- G. Parking: The Contractor shall make any necessary contacts with all applicable governmental bodies to arrange for the removal of parked automobiles, vehicles and other obstructions if they would interfere with the performance of the Contractor's work. Contractor has utilized an estimated amount, provided by Owner, for the cost of parking up at the Casey Parking Structure. Costs associated with the cost of parking at the Casey Parking Structure will be reimbursed by the Owner as part of the Cost of the Work.

107.13 RIGHTS-OF-WAY, EASEMENTS AND PREMISES

Paragraph B is deleted in its entirety and revised to read:

- B. The Contractor shall obtain Permits for special occupancy and use of specified work areas from all appropriate and necessary governmental agencies. Cost for obtaining such permits are reimbursable as part of the Cost of the Work.

107.14 TWO YEAR MAINTENANCE AND WARRANTY

Paragraph A is deleted in its entirety and revised to read:

- A. The Contractor shall fully warrant all work for at least two (2) full years from Substantial Completion of the Project.

107.19 EXPLOSIVES

Delete Section in its entirety and revise to read:

The use of explosives are prohibited on this project.

108.01 CONTRACTOR'S CONSTRUCTION SCHEDULE

Paragraph B is deleted in its entirety and revised to read:

- B. A preliminary Construction Schedule is included in Exhibit D. "Milestones & Project Schedule," and shall be the basis of Contractor's Project Schedule, estimated activity durations, and Contract Documents being delivered to Contractor. Assumptions and durations in the Project Schedule for the risk of performance shall not be Contractor's to bear. This schedule was developed cooperatively with the Owner's assistance and input on activity relationships, interrelationships, and durations. The activities, interrelationships, and relationships of the Doppelmayer aspects of work are not Contractor's responsibility or risk for performance. Contractor shall not bear the risk of performance of any and all permitting processes either noted on the Project Schedule (see exhibit D) and those not listed as well. Contractor shall not bear the risk of performance of Architect or the Owner's engineers.

Paragraph H is deleted in its entirety.

108.06 REMEDIES FOR DELAY

Paragraph A is deleted in its entirety and revised to read:

- A. The parties agree that the occurrence of an excusable delay that delays overall Project completion may not result in additional compensation paid to the Contractor.

Paragraph D is deleted in its entirety and revised to read:

- D. When Contractor is entitled to additional compensation as stated above, Contractor is entitled to reimbursement during the period of time when overall Project completion was actually delayed. Such reimbursement shall include direct costs, if any, incurred as a result of the delay and a total of

4% added to these amounts for both overhead and profit. Work performed by a first tier Subcontractor shall include no more than a 10% mark-up for both overhead and profit, with an additional 4% mark up for Contractor for both overhead and profit. If the work is performed by a Subcontractor at the second tier or lower, that Subcontractor is entitled to a total of 10% for both overhead and profit and the Contractor and any Contractors above that tier are entitled to a total of 4% each for overhead and profit. Any other cost or consequential damage, including, but not limited to costs incurred on other construction projects, is not compensable.

108.07 SUSPENSION OF WORK

Paragraph B is deleted in its entirety and revised to read:

- B. If suspension occurs for Owner convenience or at the direction of the federal government, as a result of the operation of law, such as an injunction issued by the court or a directive from the federal or state government, Contractor shall be provided an adjustment of Contract Time corresponding to the period of the suspension and shall be reimbursed for its direct costs incurred as a result of the delay and 4% mark-up for both overhead and profit. However, if performance of work would have stopped as a practical matter for other reasons irrespective of Owner convenience, such as unusually adverse weather conditions or other excusable delays noted in 108.05C, then no additional compensation will be provided.

108.08 LIQUIDATED DAMAGES

Delete Paragraph A in its entirety and revise to read:

- A. If the Contractor fails to complete the Work within the original or adjusted Contract Time, the parties agree that Owner will be damaged and that the amount of damage to Owner and to the public will be difficult to determine. Therefore, Contractor agrees to pay the amount of liquidated damages stated in the Agreement. Liquidated damages will be measured not only by direct losses to the Owner as a result of delay, but intangible losses to the general public such as loss of use.

108.10 USE OF PLANS AND SPECIFICATIONS

Paragraph A. is deleted in its entirety and revised to read:

- A. The Owner intends the Plans and Specifications to coordinate with each other to provide for a complete Project. The Contractor shall make every attempt to review, check and compare all Plans and Specifications prior to construction and notify the Owner if conflicts, discrepancies, errors or omissions are apparent in order to permit correction at the lowest possible cost to all concerned. A current copy of the Plans and Specifications reflecting all changes that have been made during the Work shall be kept on or near the site of the Work at all times.

108.11 OWNER'S RIGHT TO PERFORM OR DELETE WORK

Paragraph A. is deleted in its entirety and revised to read:

- A. If the Contractor refuses or fails to comply with the Contract, the Owner may correct any deficiency or defect or perform work that the Contractor has failed to perform, or take other appropriate action without prejudice to any other remedy the Owner may have under the Contract. Before taking that action, the Owner will provide the Contractor and its sureties with seven days Notice of its intentions, unless an emergency or dangerous condition exists, in which case the action may be taken without Notice. In the event that the Owner performs part of the Contractor's work, corrects deficiencies or is required to take action as a result of an emergency or dangerous condition, the Owner may deduct the cost, as provided for in the Schedule of Values (Exhibit A to the Agreement), of that action from any payment then or thereafter due the Contractor. In the event that the cost of the Owner's action exceeds any sums held by Owner and otherwise payable to Contractor, Contractor agrees to reimburse Owner for any excess costs.

Paragraph B is deleted in its entirety and revised to read:

- B. The Owner has the right to delete work from this Contract and the parties agree that such action does not constitute a breach of contract. Therefore, Owner may delete work from the Contract and perform it with its own forces or have such work performed by another Contractor. If work is deleted from the Contract, the cost, as provided for in the Schedule of Values (Exhibit A to the Agreement), of performing such work shall be deducted from the Contract Amount to be paid to the Contractor. Any objections to the change in Contract Amount shall be processed as a Claim as required by Subsection 109.17

109.02 COMPENSATION

Paragraph E is deleted in its entirety and revised to read:

- E. The Contract Amount is full compensation for furnishing all materials, Incidental Work, equipment, tools, labor and incidentals necessary to perform the Work in a complete manner in compliance with the Contract Documents. In addition, the cost of Bonds, insurance and compliance with all legal requirements for the Project are included within the Cost of the Work. The costs of Bonds will be reimbursed to the Contractor as part of the Cost of the Work.

109.09 PAYMENT FOR EXTRA WORK PERFORMED ON A FORCE ACCOUNT BASIS

The following paragraph is added to this Section as Paragraph D:

- D. The preceding payment terms and conditions shall apply to all subcontractors and sub tier subcontractors performing work on the Project for the Contractor. Unless payment provisions have been mutually agreed to otherwise by Change Order, additional costs incurred by Contractor in its performance as the CM/GC under this Contract shall be fully reimbursed, including a 4% fee for overhead and profit for additional work performed, as directed by the City.

109.17 CLAIMS FOR ADDITIONAL COMPENSATION, REQUESTS FOR ADDITIONAL TIME AND REQUIRED NOTIFICATION

Paragraph J is deleted in its entirety and revised to read:

- J. If the Contractor is entitled to additional compensation it shall receive 4% for both overhead and profit for any amount owed. If the work for which additional compensation is provided was performed by a Subcontractor, the Owner shall pay 10% for both profit and overhead to the costs incurred by the Subcontractor and an additional 4% for both overhead and profit to the Contractor.

109.18 RECORDS

Paragraph A is deleted in its entirety and revised to read:

- A. The Contractor and its Subcontractors shall maintain all fiscal records relating to public Contracts in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document their performance of the work and any Claims for additional compensation or requests for additional Contract Time arising from or relating to their performance under a public Contract. Contractors and Subcontractors shall make all records pertaining to their performance, any Claims or requests under a public Contract accessible to the Owner at reasonable times and places, regardless whether litigation has been filed as to such Claims. Any requests for copies of the Contractor's documents and records as well as copies of Contractor's subcontractor's and their respective sub tier subs shall be provided within a reasonable time period.

Paragraph D is deleted in its entirety and revised to read:

- D. Contractor shall produce all such records in Portland, Oregon, regardless of whether the records are produced pursuant to this provision of the Contract or as a result of a claim, litigation, arbitration or other proceeding.

109.19 PARTIAL OCCUPANCY OR USE

Paragraph A is deleted in its entirety and revised to read:

- A. The Owner may occupy or use any completed or partially completed portion of the Work, at any state of construction, provided such occupancy or use is not prohibited by regulatory agencies having jurisdiction over the Work. The Owner shall compensate Contractor for any cost and time impacts that can be demonstrated by Contractor due to the Owner's early occupancy. Any area or occupancy taken by Owner shall relieve Contractor from any repairs or damages while under the

occupancy and care of the Owner. The Owner shall have the responsibility to secure said area and the responsibility to demonstrate and prove, if damage is incurred, that Contractor forces or those acting on behalf of Contractor did cause said damage. Owner shall be responsible for the cost of utilities and services utilized during its occupation. If the cost of utilities cannot be easily determined a prorated method shall be computed to the mutual satisfaction of Owner and Contractor.

Subparagraph F (4) Is deleted in its entirety and revised to read:

4. Upon Substantial Completion, the Owner shall be responsible for utilities, insurance, security, maintenance and damage to work caused by Owner's agents, public, acts of vandalism, any acts outside the control of Contractor, and employees unless otherwise provided in the Certificate of Substantial Completion. Contractor remains responsible for damage to work caused by its Subcontractors, agents and employees during the performance of punch list work

109.20 PAYMENTS AND RETAINAGE

Subparagraph A (1) is deleted in its entirety and revised to read:

1. The Contractor shall submit to the Owner's Representative a Schedule of Values allocating costs to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Representative may require. The schedule of Values shall be integrated into the Project Schedule (CPM), the monthly updates and Project Schedule submittal shall be the method for determining the progress payments to Contractor (schedule earned value method). This Schedule (schedule of Values), unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's applications for payment.

Paragraph C is deleted in its entirety and revised to read:

- C. The cost of Bonds and insurance are reimbursable as part of Cost of the Work

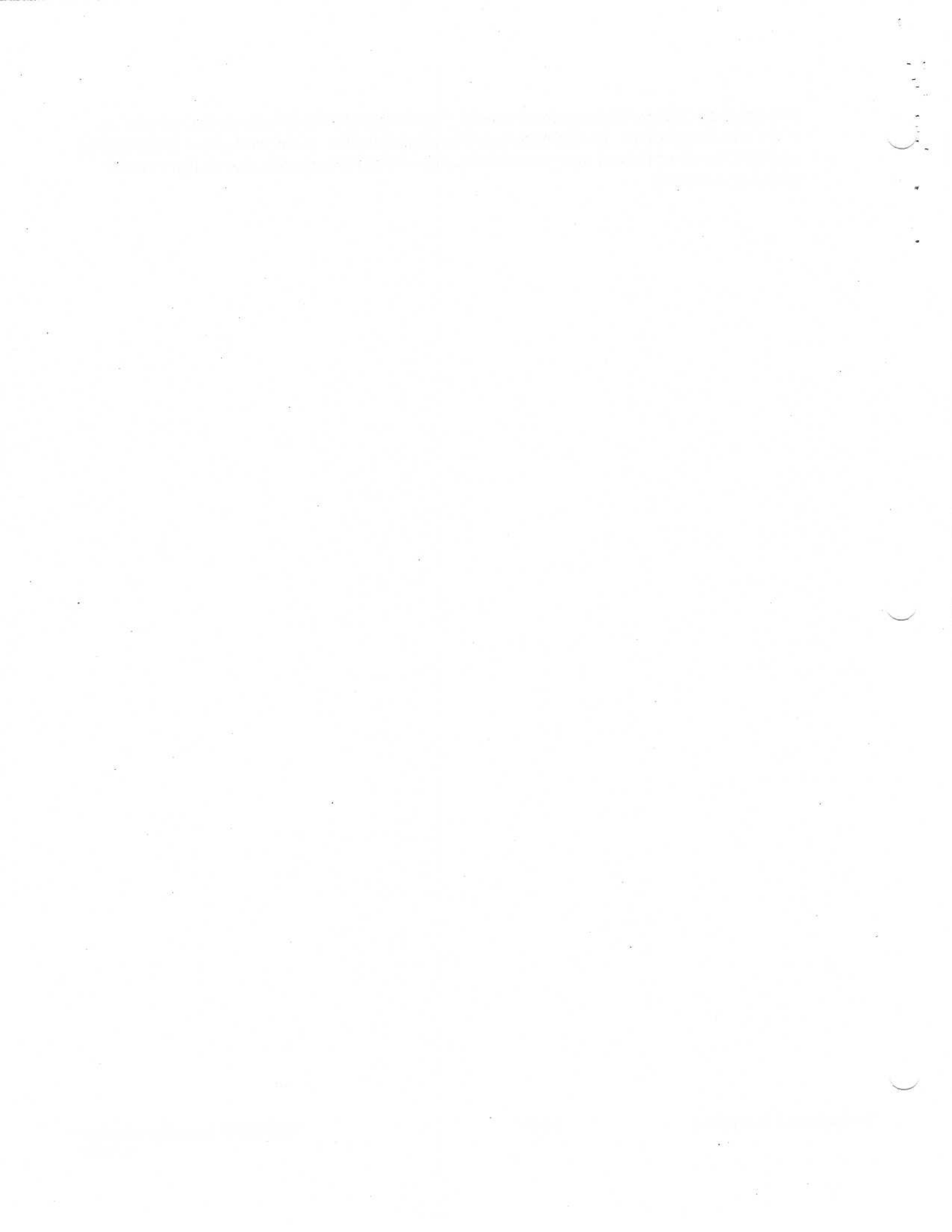
Subparagraph E (7) is deleted in its entirety and revised to read:

7. Owner is not required to pay for any portion of the Work that is disputed or which would otherwise not be eligible for payment pursuant to a monthly progress payment. However, if the matter or issue under dispute is resolved in favor of Contractor then Owner will pay the full amount due within 15 days of resolution of the matter, and Contractor may be entitled to recover interest as set forth by ORS 279C.570.

Paragraph F is deleted in its entirety and revised to read:

- F. In addition to the advance payment, Contractor shall also receive a monthly progress payment as described in more detail in Paragraphs G through R. To receive a monthly progress payment, Contractor first shall estimate the work performed in any calendar month and submit an invoice to the Owner's Representative for approval before the fifth day of the following month based on the estimate. The schedule of Values shall be integrated into the Project Schedule (CPM), the monthly updates and Project Schedule submittal shall be the method for determining the progress payments to Contractor (schedule earned value method). The invoice shall include the value of labor

performed and materials incorporated into the project since the work began or the last invoice, whichever is applicable. The estimate may be an approximation of the work, labor and materials provided, but should bear a reasonable relationship to the entire contract amount due once the project is completed.



PORTLAND AERIAL TRAM PROJECT
Exhibit F: M/W/ESB SUBCONTRACTING PLAN
Revised April 28, 2005

M/W/ESB PROGRAM CONSTRUCTION PLAN

The object of the M/W/ESB Program Construction Plan on the Portland Aerial Tram Project (Project) is to maximize utilization of the City's Sheltered Market Program (SMP) and M/W/ESB subcontractors in the construction of the Project. This objective will be accomplished while ensuring the Project meets schedule, budget and ensures a quality project.

Contractor's M/W/ESB utilization begins with the retention of local expert FM Burch and Associates, Inc. (Contractor's Consultant), who is assisting in the preparation of the M/W/ESB Program Construction Plan. Contractor's Consultant has extensive experience and expertise in developing and implementing participation programs for minorities and women in the Oregon construction industry. The Contractor's Consultant will be retained to provide guidance in developing the Program Plan in identifying subcontracting opportunities for the program, organize outreach meetings, provide technical assistance to the subcontractors and assist with industry awareness of the Project during the life of the Project.

The procurement of subcontractors for the Project will consist of a fair, local and competitive subcontractor solicitation process, which incorporates the City of Portland's (City) commitment to the utilization of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Emerging Small Business (ESB) and the City's Sheltered Market Program (SMP). As the CMGC Contractor we will use both the "Informal" and "Formal" calls for bid to bring about the highest participation of M/W/ESB subcontractors.

The process, at a minimum, will include timely notification of solicitation requests, availability of and easy access to plans and specifications, identification of subcontracting work feasible for M/W/ESB solicitation, identification of M/W/ESB subcontractors by work categories, facilitating the interest of these subcontractors on the Project, directing larger subcontracting bidders to interested lower tiered opportunities for smaller M/W/ESB subcontractors, and evaluating bid proposals for compliance with the City's solicitation requirements.

The Contractor will strive to meet an Aspirational Goal of 35% M/W/ESB participation on the total value of the contract throughout the life of the project.

The Contractor will comply with the Accelerated Payment and EEO requirements outlined in these contract documents and as outlined in applicable city programs.

These requirements will also be passed onto sub-contractors at any tier as follows:

Accelerated Payment

All contracts are subject to the requirements of Section 109.20 Payment of the City of Portland's Standard Construction Specifications, which concerns twice monthly payment to primes and

subcontractors. Please refer to those specifications for more details. These provisions are mandatory on all contracts of the project at any tier.

EEO Certification

All bidders and proposers must be certified as Equal Employment Opportunity Affirmative Action Employers. Failure to receive EEO Certification prior to the date and time of bid opening may result in a delay in the awarding of a contract.

I. Criteria for Identifying and Packaging SMP and M/W/ESB Subcontracting Opportunities

The following criteria will be used in creating construction packages for the SMP and M/W/ESB subcontractors.

- Direct Negotiation \$0-\$5,000
- Informal Packages under \$5,000-\$200,000
- Formal Packages above \$200,000

The Contractor in collaboration with the City will review all of Contractor's subcontract opportunities against these criteria to ensure maximum opportunities are brought forward while mitigating risk and cost. Contractor will prepare an SMP-M/W/ESB Construction Package Form for each package identified for SMP or M/W/ESB solicitation. This information will be used to develop a basis for outreach coordination and solicitation purposes. SMP solicitation will be coordinated with the City's SMP Program Coordinator.

II. Procurement Methods

Contractor will procure all subcontractors in the construction of the Project using the following methods:

A. Informal Bid Methods

- Direct Negotiation (Limited Solicitation) – where the Estimated Package Value (EPV) is not greater than \$5,000 – Project packages at this level will be negotiated directly with the subcontractor. This procurement process may be appropriately used for limited construction support services. Only three subcontractors need be solicited in this category and contract award may occur provided the bid amount is less than \$5,000 and other bid requirements are properly met.
- Informal Solicitation – where the EPV is not greater than \$200,000 – Project packages at this level will not be advertised; however, solicitation will target all interested SMP subcontractors, provided at least three (3) M/W/ESB subcontractors indicated interest in bidding the package. These packages will be subject to the Sheltered Market Program Bid Specifications (*See Attachment*).

B. Formal Bid Methods

- Formal Solicitation/Good Faith Efforts (GFE) Required - where the EPV is greater than \$200,000- Project packages at this level will, as a minimum, be advertised in the (a) Daily Journal of Commerce, (b) El Hispanic News (c) Skanner News (d) Portland Observer, (e) The Asian Reporter and made available for posting on (f) the Bureau of Purchases web page.
- These packages will be subject to the City's Good Faith Efforts Requirements regardless of subcontracting tier. The Good Faith Effort Program requires prime contractors to make an effort to provide subcontracting opportunities to state certified Minority-owned, Women-owned or Emerging Small Business (M/W/ESB) firms. The prime is required to contact state certified firms by fax or letter and phone for those divisions of work specified by the Contractor at the time the contract is put out to bid. Efforts to contact and work with certified firms must be documented to the Contractor.
- Contractor will engage GFEs on all packages having an EPV greater than \$200,000 and will require all subcontractors submitting a proposal to perform work in the package or submitting a quote to perform work in the package regardless of tier to meet the Good Faith Effort Program Requirements.

C. Formal Qualification/Price Based Method

- Request for Proposal (RFP) - where the work involved require specialized knowledge, skill, experience and expertise - Project packages that require special professional skills, knowledge, experience and expertise not included in the City's pre-qualification work classifications will be solicited through this method. Requests for Proposals (RFPs) will, as a minimum, be advertised in (a) the Daily Journal of Commerce, (b) El Hispanic News (c) Skanner News (d) Portland Observer (e) The Asian Reporter, and made available for posting on (f) the Bureau of Purchases web page.
- Contractor will engage GFEs on all packages having an EPV greater than \$200,000 and will require all subcontractors submitting a proposal to perform work in the package or submitting a quote to perform work in the package regardless of tier to meet the Good Faith Effort Program Requirements.

RFPs may require of proposing subcontractors when deemed to be appropriate the following:

- Provide the name of the three most recent projects on which it performed work utilizing M/W/ESB subcontractors and the total amount for each project. List the name, nature of work, and subcontract dollar amount of each M/W/ESB subcontractor for the cited projects.

- Describe successes that occurred through M/W/ESB participation, problems experienced by these subcontractors and solutions adopted and implemented during the life of the project.

III. M/W/ESB Program Parameters

All project packages identified with SMP and M/W/ESB opportunities will be subject to the contract provisions approved for the Sheltered Market Program Bid Specifications and the M/W/ESB Participation Good Faith Effort Requirements for the Project.

IV. Outreach/Solicitation from SMP and M/W/ESB Subcontractors

To avoid confusion on the part of subcontractors submitting quotes at or below the second tier, Contractor will be available to provide outreach services to SMP and M/W/ESB subcontractors as detailed below. Outreach services to SMP subcontractors will be coordinated with the City's SMP Program Coordinator.

A. Solicitation Prioritization

To assure maximum procurement of SMP and M/W/ESB subcontractors in the Project, solicitation prioritization is the following for all project packages that are solicited using the Informal Bid Methods as described above:

- First*, from SMP Subcontractors
- Second*, from M/W/ESB Subcontractors
- Third*, from open market Subcontractors

B. Outreach/Solicitation Procedures

1. Construction Package Form: Prior to solicitation, Contractor will prepare an SMP-M/W/ESB Construction Package Form for all project packages with an EPV greater than \$5,000 and less than \$200,000. Contractor will prepare an Outreach Letter of Inquiry containing information on the package. This letter will be faxed to all SMP subcontractors in coordination with the City's SMP Program Coordinator.

2. In the event less than three SMP subcontractors within the designated scope of work respond as having interest in bidding the package, Contractor will then proceed to send the Outreach Letter of Inquiry to certified M/W/ESB subcontractors falling within the appropriate commodity code best describing the work contained in the package. Letters will be sent until a total of three (combined SMPs and M/W/ESBs) have responded as having interest in bidding the package. Contractor will expand the outreach efforts to open market subcontractors if, and only if, less than three subcontractors from the SMP and M/W/ESB ranks have responded as having interest in bidding the package.

3. Subcontracts to be Awarded by Contractor: Contractor will generate a list of those subcontractors having indicated interest in bidding the package. Contractor will in turn mail a bid proposal packet to those interested subcontractors and/or make available for pick-up. The bid proposal packet will include a Package Number, BOLI Requirements (where appropriate), Bid Date and Time, Bid Submittal Address, Estimated Package Value (EPV), Estimated Notice to Proceed Date (ENTP), etc.

4. Subcontracts to be Awarded by First Tier or Lower Tier Subcontractor: Contractor will conduct outreach as outlined above and the results of the efforts, i.e. the names, addresses, etc., of interested lower tier and SMP subcontractors will be transmitted to the first tier or lower potential subcontractors from whom the prime is soliciting bids. This will enable those first tier or lower subcontractors to solicit quotes from those identified interested SMP subcontractors prior to the bid date of the subcontracted work.

5. Any Tier 1 subcontracting package, division of work, and/or work element having an EPV greater than \$200,000, will be solicited from open market subcontractors. Subcontractors bidding on any package, division of work, and/or work element having an EPV greater than \$200,000, regardless of subcontracting tier, will be required to meet the Good Faith Effort Program Requirements and submit the various required forms such as: (a) Compliance Form (Form 1), (b) Good Faith Effort Program Requirements Subcontractor Form (Form 2), (c) M/W/ESB Contact Log (Form 4), (d) Rejected M/W/ESB Bids Received (Form 5), and otherwise comply with all Good Faith Efforts Program Requirements. Contractor will require all subcontractors either bidding or quoting work on the Project, regardless of tier, for a dollar amount greater than \$200,000, to engage Good Faith Efforts toward utilizing M/W/ESB subcontractors on the work being bid or quoted. Contractor will deem bid proposals not meeting this requirement to be non-responsive.

6. Contractor will be available and offer to assist prospective bidders in SMP and M/W/ESB outreach/solicitation services on project packages with an EPV greater than \$200,000.

7. Contractor will ensure the package is advertised in (a) Daily Journal of Commerce (DJC), (b) El Hispanic News (c) Skanner News (d) Portland Observer (e) The Asian Reporter, and the ad is made available to (f) the Bureau of Purchases for posting on the web page, (g) Oregon Association of Minority Entrepreneurs, (h) National Utility Contractors' Association (NUCA), and (i) Associated General Contractors (AGC).

8. All subcontractors, regardless of tier, that have lower tiered subcontractor(s) will be required to submit a Monthly Subcontractor Payment and Utilization Report (Form 5) and can expect to be paid according to accelerated payment requirements.

Outreach services provided by Contractor will (a) ensure timely, consistent outreach, (b) timely notification to soliciting subcontractors of interested SMP and M/W/ESB subcontractors, (c) reduce or eliminate inconsistent outreach efforts, and (d) enable package to remain on schedule and within budget.

C. Outreach Components

- Subcontracting Opportunities Forum
During the pre-construction services phase, Contractor will conduct an outreach conference apprising the construction industry and M/W/ESB subcontractors of the subcontracting procurement process and approach to M/W/ESB utilization. The conference will include information on future bidding opportunities by description of work, anticipated solicitation dates, and divisions of work identified for M/W/ESB and local subcontractor participation. Conference attendees will be informed of the resources that will be available to them during the bidding and construction phases. This event will also provide a networking forum for prospective contract participants. Major and/or specialty subcontractors anticipating bidding on project packages will be invited to attend.
- OAME Contractor Committee Meeting
During the life of the project, the contractor will attend monthly meetings providing information on future bidding opportunities by description of work, anticipated solicitation dates, and divisions of work identified for M/W/ESB and local subcontractor participation.
- Voluntary M/W/ESB Project Outreach Meeting
During the construction phase, voluntary pre-bid meetings (or mandatory pre-bid meetings in the case of SMP subcontractors) will be conducted on project packages where work has been identified for M/W/ESB or SMP participation to assure prospective bidder/subcontractor have an understanding of the solicitation requirements. At the meeting, bidders will receive information and instructions, and be offered assistance in conducting effective solicitation steps to obtain M/W/ESB participation.
- Project Notifications
M/W/ESB firms will be provided ample notification of contract opportunities via mail, e-mail, fax, or phone, through minority/women trade associations and general publications. Ads will be placed in El Hispanic News, Skanner News, The Asian Reporter and the Portland Observer. The notifications will inform prospective subcontractors of the type of work, bid date, availability of plans and specifications, and technical assistance. Kiewitt will also have a booth at the OAME Trade Fair and participate in other upcoming M/W/ESB networking opportunities.
- Plans and Specifications
In addition to plans and specifications being available at industry plan centers, Contractor will maintain ten full sets of plans and specifications for project packages for on-site review and overnight check-out to M/W/ESB firms. In addition to being available in hard copy, plans and specifications will also be made available electronically when possible.
- Contractor Assisted Purchasing
To level the playing field, Contractor may negotiate pricing and secure a single material supplier or group of suppliers on particular aspects of the Project to decrease or eliminate

material pricing as a factor in the award of contracts to SMP and M/W/ESB firms. Many of these firms are small and do not have the purchasing power or ability to negotiate the best unit prices from major suppliers, and thus are less competitive.

■ Newsletter

Contractor will publish a bi-annual newsletter that focuses on M/W/ESB opportunities and M/W/ESB utilization on the Project. The newsletter will identify upcoming opportunities, outline program components and project requirements, highlight successful M/W/ESB participants, solicit feedback for program improvement, identify by name and dollar amount M/W/ESB firms receiving work on the Project, etc. The publication will be sent to M/W/ESB firms free of charge in the tri-county area and City of Vancouver and other community stakeholders.

V. SMP and M/W/ESB Capacity Building

Contractor in collaboration with the City staff including the SMP Coordinator will identify elements of work to be packaged for capacity building purposes for SMP and M/W/ESB subcontractors. The creation of capacity building packages will be guided by the following considerations:

1. Opportunity for multiple packages to offer multiple bid opportunities.
2. Contract amendment for additional work where appropriate opportunity arises.
3. Prompt payment will be enforced on all project packages regardless of tier to assure M/W/ESB financial capacity.

Elements of work predetermined to offer such opportunities and to be packaged accordingly include, but may not be limited to: (a) electrical, and (b) concrete

VI. Technical/Business Assistance

Contractor will offer and provide the following technical assistance services to all SMP and M/W/ESB subcontractors awarded a contract on the Project regardless of subcontracting tier:

1. Establish a schedule of values for the package to be performed.
2. Bidding and estimating assistance.
3. When possible, contractor will negotiate pricing and secure a single material supplier or group of suppliers on particular aspects of the Project
4. Waive performance bonding requirements for contracts less than \$200,000.
5. Advance on progress payment consistent with the City's Accelerated Payment provisions, i.e., bi-weekly payments.
6. Inform contractors of Owner Sparta Insurance Program requirements.
7. Payment advance superceding the advance on progress payment provisions in those instances where prudent and appropriate to facilitate successful participation of first tier SMP and M/W/ESB subcontractors.

Other technical/business assistance requests beyond those listed here will be referred to the City's Sheltered Market Program Coordinator for available services and/or actions deemed appropriate. Technical assistance is available to all Sheltered Market Program participants both during the bid phase and contract execution phase of any construction contract.

VII. Pre/Post Contract Award Monitoring and SMP and M/W/ESB Replacement Policy and Procedure

A. Pre/Post Contract Award Monitoring

Contractor will comply fully with the provisions of the Subcontracting Procurement Memorandum (attached) in the solicitation and award of subcontracts during the life of the Project. Prior to each solicitation, Contractor will allow City access to all bid proposal packages for review and comment. After solicitation but prior to subcontract award, Contractor will make all bid proposal results, responses to RFPs, and other supporting documentation available to the City for review purposes to monitor compliance with established procurement procedure.

Contractor will establish and maintain contact with all participating SMP and M/W/ESB subcontractors, 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 subcontractor(s). Contractor will inform the Bureau of Purchases as or if issues arise. In addition, information regarding such matters will be submitted with the Monthly Subcontractor Payment and Utilization Reports (Form 5) as an attachment entitled, Post Award Monitoring Report.

VIII. Documentation and Program Evaluation

A. Documentation

During the life of the Project, Contractor will document information regarding the implementation of the M/W/ESB Program Construction Plan. Information to be documented includes all aspects of the program, including but not limited to:

- Creation of SMP and M/W/ESB packages;
- Good Faith Effort results;
- Copies of all outreach documents pertaining to direct negotiation and informal solicitation bids;

Required documentation of the M/W/ESB Program Construction Plan that is produced and maintained by the Contractor will be available for City audit purposes. Contractor will allow City access to all M/W/ESB Program Construction Plan components for preliminary review to assure all systems are operating satisfactorily.

B. Bi-Monthly Reporting

During the life of the project, the contractor will provide information on all contracting activity to the Bureau of Purchases, this will include supplier, contractors and Professional Technical and good and services. This information will be provided in Excel spreadsheet reports reflecting data from all subcontracting tiers. Reporting will include but not be limited to the following: company name, certification status (SMP, M/W/ESB or OBE), bid estimate, award amounts, notice to proceed dates, amount paid to date, etc.

C. Monthly Reports

Contractor and all subcontractors working on the Project having a lower tiered subcontractor will prepare a Monthly Subcontractor Payment and Utilization Report (Form 5). Contractor will prepare two copies of these reports and submit it monthly to the Bureau of Purchases.

D. Project Report & Evaluation

On or before January 15, Contractor will prepare a Project Report capturing pertinent information and data experienced since the start of the project. Contractor in collaboration with the City will develop the informational elements, data, and format in which the report is to be prepared and delivered. The Project report will contain a program evaluation component reflecting the level of success in meeting M/W/ESB participation goals, which will include but not be limited to such outcomes as: predetermined number of SMP and M/W/ESB packages, awards, level of SMP and M/W/ESB participation, payments and identification of program barriers, and recommendations for program enhancements, etc.

IX. Required Procurement Documents

A. Good Faith Effort Program

Good Faith Effort Requirements Bidder Checklist

MBE/WBE/ESB Participation Good Faith Effort Requirements

Form 1 Portland Arial Tram Project
Compliance Form
Submission Deadline: By 3pm bid date

Form 2 Portland Arial Tram Project
Good Faith Effort Program – Subcontractor Form
Submission Deadline: By 3pm bid date

Form 3 Portland Arial Tram Project
M/W/ESB Contact Log – Form 3

Submission Deadline: Apparent low bidder to submit to project manager by 4:00pm the day following the bid opening.

- Form 4 Portland Arial Tram Project
Rejected M/W/ESB Bids Received – Form 4
Submission Deadline: Apparent low bidder to submit to project manager by 4:00pm the day following the bid opening.
- Form 5 Portland Arial Tram Project
Monthly Subcontractor Payment and Utilization Report – Form 5
Submission Deadline: Monthly, after contract award.
- Letter to *Submission Deadline: Apparent low bidder to submit to project manager by*
M/W/ESB *4:00pm the day following the bid opening.*
Firms

B. Sheltered Market Program Requirements

Sheltered Market Program Bidder Checklist

Sheltered Market Program Bid Specifications

Sheltered Market Program Compliance Form (Form 1)

Sheltered Market Program First Tier Subcontractor Form (Form 2)

M/W/ESB Contact Log (Form 4)

Monthly Subcontractor Payment and Utilization Report (Form 6)

Draft
EXHIBIT G
PORTLAND AERIAL TRAM
Workforce Training and Hiring Plan
April 28, 2005

A project's greatest asset is its people. Training is the key to receiving maximum potential from our team. Kiewit places significant emphasis on training at all levels. The Project training program begins with a thorough indoctrination of new employees and our subcontractors employees. Kiewit Project managers will also have hands on Diversity Training that will provide them with useful tools for working with a Diverse Team.

On the job training is conducted to enhance skills in safety and the use of tools, personal protective equipment, fall protection, and specialized work.

- Regular subcontractor coordination meetings will be held, safety and training shall be the first item on the agenda.
- Regular "Toolbox" meetings are held by each crew weekly and include hands-on training sessions. This project holds monthly mass safety meetings that include training.
- Monthly there will be Project-wide training safety stand-downs where half-day training sessions shall conducted by the project and Project specific topics will be the introduced and discuss.

Kiewit will work with the City of Portland, City Labor Apprenticeship and Training programs, and AGC Training programs to recruit apprentices for our self performed work and to assist subcontractors with projects over \$100,000 or more to proactively recruit and hire apprentices, women and minority employees.

We will ensure that Project subcontractors will achieve and maintain the goal of 20% apprentice participation in each applicable trade performed by subcontracts of \$100,000 or more and that the overall goals for diversity of 14% minorities and 6% women are achieved.

Project wide and subcontractor specific participation will be monitored by the project staff our M/W/ESB and Workforce Coordinator and reported to the City of Portland. Monthly meetings will be held with project staff, the City of Portland's compliance monitors and key subcontractor representatives to review the apprentice and diversity program performance and forecast for the overall project performance.

Subcontractors, with subcontracts of \$100,000 or more will be required to conform to this program plan. Pre Bid Meetings, and all Bid packages, requests for proposals and individual subcontract documents will include the Project specific Workforce Training & Hiring Program requirements to ensure an understanding of the Project requirements, compliance and reporting responsibilities.

Workforce Training & Hiring Program-CM/GC

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 City projects, and projects with PDC funds, 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. CM/GC :

- **A. Submit Projected Hiring Needs form (Exhibit 2) to Owner within 15 calendar days after submission of GMP 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 the start of the project for all subcontractors listed on the First Tier Subcontracting Disclosure Form. Subcontractors added after contract award must 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. CM/GC 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 CM/GC 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 at (503) 823-6855 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 the City of Portland, 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 Compliance Specialist.
- **F. By the 5th of each month to the Owner's Project Manager and the City Workforce Program, submit Monthly Employment Report (Exhibit 4). Electronic version will be required for submission and provided by the prime contractor for distribution.**

Please consult the Workforce Training & Hiring Requirements for additional information or call the City Workforce Program at (503) 823-6855 if you have questions.

WORKFORCE TRAINING AND HIRING PROGRAM REQUIREMENTS

I. PURPOSE OF WORKFORCE SPECIFICATIONS

A. General Program Description

The Portland City Council has directed that all Bureaus and Departments maximize apprenticeship and employment opportunities for minorities, women and economically disadvantaged workers in the construction trades. (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 the City of Portland and Multnomah County, and b) that their contracting dollars provide fair and equal opportunities to the jurisdictions' diverse populations.

The Workforce Training & Hiring Program ("Workforce Program") is administered for the City of Portland, Multnomah County, Tri-Met, Portland Development Commission (PDC), 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 the City of Portland and Multnomah County.

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

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

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

"Contractor" shall mean the Construction Manager/General Contractor (CM/GC) to whom a contract is awarded, and any subcontractors with subcontracts of \$100,000 or more.

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

"Owner" shall mean the government agency that awarded the contract, or leveraged public involvement in the project through a loan, 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 the CM/GC must take in order to be eligible for an award of a contract.

Section III lists the actions that must be taken by the CM/GC.

Section IV refers to remedies available to the Owner if a CM/GC 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 CM/GC and subcontractor records.

**II. ACTION REQUIRED OF THE CONSTRUCTION MANAGER/
GENERAL CONTRACTOR**

- A. The CM/GC shall thoroughly read this Workforce Program specification and commit to perform all requirements described herein. The CM/GC shall submit Exhibit 2, Projected Hiring Needs within fifteen (15) calendar days after submission of the GMP 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.

III. ACTIONS NECESSARY TO SATISFY CONTRACT REQUIREMENTS

A. Make Reasonable Efforts to Have Diverse Workforce

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

The CM/GC 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 CM/GC 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 journeyworkers 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 5.

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 CM/GC 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. The CM/GC shall include in its GMP all costs associated with this requirement. No change order will be executed in order for the CM/GC to comply with this section.
2. The CM/GC 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 CM/GC 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. Training programs approved by and registered with BOLI may be used to fulfill training requirements under the workforce specifications. Other training alternatives must be approved by the City's Workforce Training & Hiring Coordinator.

2. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts which are not apprenticeable occupations, 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 Workforce Training & Hiring Program Coordinator for the project.

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

D. Submit Documentation

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

1. Training Agent Status

The CM/GC and all required subcontractors listed on the First Tier Subcontractor Disclosure Form 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 listed on the First Tier Subcontractor Disclosure Form 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. CM/GC and Subcontractor Reports After Work Begins

The Monthly Employment Report (Exhibit 4) must be submitted by the CM/GC 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 CM/GC shall:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the project by the CM/GC, and subcontractors with subcontracts of \$100,000 or more, are worked by state registered apprentices throughout the duration of the project. The CM/GC 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 CM/GC has remedied the breach of contract. In the event that progress payments are withheld, the CM/GC 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 CM/GC'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 CM/GC fails to comply with the workforce provisions of this contract, the CM/GC 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 CM/GC 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 the number of days of undelivered training. ($50/8 = 6.25 \times \$250 = \$1,562.5$).

Damages may also be assessed for failure to fulfill the inclusive hiring process described in 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 CM/GC agrees that any delay to the specified contract time as a result of the CM/GC's failure to comply with the requirements of this section shall subject the CM/GC to the amount of liquidated damages specified elsewhere in the contract.

D. Notification of Possible Debarment

By executing this contract, the CM/GC agrees that it has been notified that failure to comply with the requirements of this portion of the contract may lead to the CM/GC'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 CM/GC 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 CM/GC 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 CM/GC 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

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/Tri-Met/PDC:

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

**Community Organizations /
Recruitment Resources**

A list of community resources that assist with construction recruitment is available upon request by calling the Workforce Program at (50) 823-6850.

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

**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/County/Tri-Met/PDC 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, to increase 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.

**PROJECTED HIRING NEEDS
20% Apprenticeship Requirement**

Exhibit 2

This form must be completed thoroughly by the prime and each subcontractor with a subcontract of \$100,000 or more. Please state the number of journey and apprentice workers you will have, by trade, on this project. *This form must include information on how your company will fulfill the Diversity Strategy requirements through utilization of women and minority apprentices.* Please complete this form in full.

Bid # _____ Project Name: _____

Federal ID # _____ Prime Contractor Subcontractor

Journey Worker Information

Trade	Total # of Journey Workers	# of New Positions	Anticipated Start Date	Estimated Total Hours

Apprentice Worker Information

Trade	Total # of Apprentice Workers	# of New Positions	Anticipated Start Date	Estimated Minority/Female Apprentice Hours	% Minority/Female Apprentice Hours

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	Term Status

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

Company Name: _____ CCB# _____

Phone: () _____ Fax: () _____ Email Address _____

Person in your company who will be hiring employees for this project _____

Are you a registered Training Agent? (circle) Yes / No Are you a (circle) Union / Open Shop Contractor?

With which JATC's are you registered to train apprentices?

JATC: _____ JATC: _____

JATC: _____ JATC: _____

Prepared by: _____ Date: _____

Prime Contractor must complete and submit to the Contract Compliance Specialist within 15 calendar days after a development agreement is signed or a bid opening occurs, 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 days of signing a subcontract, whichever occurs first, to Prime Contractor.

Prime Contractor must submit to: Workforce Program, Bureau of Purchases, 1120 SW 5th Avenue #750, Portland, OR 97204. FAX: (503) 823-5539.

Note: Further instructions will be provided.

EXHIBIT 3

Request For Apprentice

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/Tri-Met/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 (City of Portland) _____

Number of Apprentices: _____ Trade/Occupation: _____

Number of Apprentices: _____ Trade/Occupation: _____

Minimum qualifications (if different from apprenticeship standards): _____

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

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

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

City/County/Tri-Met/PDC Workforce Training & Hiring

1120 SW 5th Ave. Rm 750, Portland, OR 97204

Phone: (503) 823-5578

FAX: (503) 823-5539

Please check the appropriate box and fax to City/County/Tri-Met/PDC Workforce Program:

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

Name of Apprentice _____ Race _____ Gender _____ Term _____

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.

Exhibit 4

**MONTHLY EMPLOYMENT REPORT
Workforce Training & Hiring Program**

CM/GC Subcontractor

Project Name: _____

Federal ID # _____

Bid #: _____

CCB# _____

Indicate here if final report

The Monthly Employment/Training Report must be completed by the CM/GC and all subcontractors with contracts of \$100,000 or more, and signed by a responsible official of the company. The CM/GC shall submit a report for its workforce on the project. Each subcontractor shall separately submit a report for its workforce on the project. It is the responsibility of the CM/GC to assure that all Monthly Employment/Training Reports are submitted in a timely manner. **This project requires 20% Apprenticeship training per trade.**

The reports are due on the 5th day of the month following each month of employment during the term of the contract. Electronic version will be provided.

Either on the form below or on a contractor-provided form approved by the City/County/Tri-Met/PDC Workforce Training & Hiring Program, complete all categories for each employee working on the project during the reporting period.

Dates from: _____ to _____ Company Name: _____ Phone: _____ Fax: _____

NAME (PLEASE PRINT OR TYPE)	ZIP CODE	SOCIAL SECURITY NUMBER	TRADE (Specify if Supervisor, or Foreman)	LEVEL (Journey, Apprentice, Apprentice Grad) Grad hours are counted up to 1 yr. After graduation J or A or G	*RACE	SEX M/F	HOURS WORKED this PERIOD

Submit to: City/County/Tri-Met/PDC Workforce Program
Bureau of Purchases
1120 SW 5th Ave # 750
Portland, OR 97204
FAX: (503) 823-5539

* 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; as well as
C - Caucasian.

Send copy to: Owner's Project Manager

Signature: _____ Print Name: _____ Title: _____

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

Exhibit I
Upper Station Restrictions

The following restrictions apply to construction activities occurring at the Upper Tram Station.

A. Ambulance access to OHSU Hospital:

Primary ambulance access is up Sam Jackson to the Emergency Room Ambulance Admitting Area at South Hospital on Sam Jackson Park Road. Access via Sam Jackson Park Road must be kept open 24 hours a day, 7 days per week. Utility installation in Sam Jackson Park Road must be preplanned and coordinated to maintain emergency vehicle access at all times. Backup routes must be established and maintained during any activities, which impact or potentially restrict emergency vehicle access on Sam Jackson Park Road. The Contractor's Traffic Control Plan must address avoiding or minimizing impacts to ambulance access to and from OHSU Hospital.

B. Life Flight:

The helicopter pad located on the roof of OHSU Hospital South will be required to be operational throughout the entire construction period. The flight path must be maintained 24 hours a day, 7 days a week. Hoisting and rigging equipment must not infringe on the existing flight path and needs to be approved through the FAA permitting process. Contractor must submit and develop a construction plan for Owner approval that demonstrates that Life Flight will not be impacted by construction activities.

C. Streets and access:

All of the roads within the OHSU campus must be kept open at all times unless otherwise approved by Owner through the Contractor's Traffic Control Plan.

D. Patient and staff access, parking and egress:

There are approximately 8800 employees and 1700 patients that enter and leave OHSU on a daily basis with approximately two thirds entering and leaving the campus in vehicles, the other third use Tri Met. There are 7 parking garages within the OHSU campus with a total of 3974 parking spaces.

Peak traffic hours for OHSU staff are 7am through 9am and 3pm through 7pm, Monday through Friday. Patient traffic entering and exiting OHSU is fairly stable throughout the day.

Particular concern must be paid to any traffic impact that would affect Homestead Drive and Gibbs Street. Neighborhoods in this area are very sensitive to increased traffic, and the narrow roads and tight corners will make deliveries on these streets impractical.

Impacts to the existing primary access streets to the site, Terwilliger Blvd and Sam Jackson Park Road, need to be evaluated in the contractor's planning and innovative ideas for minimizing traffic impacts are needed. Contractor's Traffic Control Plan shall address the methods for eliminating or minimizing traffic impacts on the OHSU campus and in surrounding neighborhoods.

E. Pedestrian traffic:

The safety of patients and OHSU staff on campus must be a top priority to the contractor. The Contractor's Traffic Control Plan must demonstrate how pedestrian and bicycle safety is being provided in the Work Area.

H. OHSU deliveries to and from the campus:

Construction truck traffic into and out of the construction site for delivery/removal of materials may not impact operations of existing loading docks.

G. Contractor delivery of construction materials to the site:

The Contractor shall develop a plan for staging and storage of construction materials that does not impact ongoing operations on the campus. Trucks cannot be allowed to park on OHSU roadways or restrict OHSU traffic for employees, patients or deliveries at any time, unless approved through the Contractor's Traffic Control Plan.

H. Infection Control, Dust, Fume, Odor, Noise, and Vibration Control:

The contractor shall understand the need for an infection, dust, fume, odor, noise and vibration control program. Operations in buildings adjacent to the construction site are very susceptible to these issues that could be generated from the construction activities. The Contractor shall submit and implement a plan for reducing or eliminating these issues for Owner approval.

I. Worker parking:

Existing OHSU parking facilities do not have the capacity to accommodate construction workers. The Contractor shall develop and submit a plan to the Owner for approval showing the location of offsite construction worker parking and proposed worker transportation routes.

J. Radio frequencies:

Radio frequencies to be used by the Contractor must be approved and coordinated with OHSU to minimize impacts on OHSU campus radio use.

EXHIBIT J

PORTLAND AERIAL TRAM

Project Interface Matrix

The Following Matrix defines the responsibilities for various elements of the project. Where AGPS and Kiewit are both defined as responsible parties, agps's responsibility is defined as having primary responsibility for design of the element, and Kiewit's responsibility is for the delivery of the element.

		Doppelmayr	Kiewit	City	AGPS	OHSU	QA	Notes
1.0	Lower Terminal Building and Structure							
1.010	Geological & geotechnical reports and investigation				✓		A	
1.020	Define interface requirements for lower terminal tramway electro-mechanical equipment (loads and geometry)	✓			✓		A, D	
1.030	Design and Engineering of Lower Terminal Building, Foundations and Structures	•			✓		A	
1.040	Supply all of Lower Terminal Building, Foundations and Structures including all materials		✓		✓		K	
1.050	As-built survey of lower terminal including all tramway interface points		✓		✓		K	
1.060	Rock anchors if required		✓		✓		K	
1.070	Control room for tramway low voltage controls		✓		✓		K	
1.080	Air-conditioning for control room		✓		✓		K	
1.090	Ventilation of machine room		✓		✓		K	
1.10	Heating of rooms with electronic components (>32°F)		✓		✓		K	
1.11	Electrical house installation like, lights, electrical power outlets, etc		✓		✓		K	
1.12	Lightning protection of terminal buildings		✓		✓		K	
1.13	Sprinkler system, fire alarm system		✓		✓		K	
1.14	Water and sanitary installations		✓		✓		K	
1.15	Water drainage for machine rooms		✓		✓		K	
1.16	Any required trench and covers for electrical and hydraulic runs in terminals	•	✓		✓		K	
1.17	Hooks, rails and anchoring points for maintenance and removing of tramway components (particularly "Halfen channels" in the machine room)	•	✓		✓		K	
1.18	Chain-hoist with runway at lower terminal to remove carrier	•		✓			C	Chain Hoist is not in anyone's scope
1.19	Bollard structures for track rope termination including wood liners	•	✓		✓		K	Doppelmayr to supply wood
1.20	All exterior and interior remodeling, employee locker area etc.		✓		✓		K	
1.21	Public address systems, loud-speakers		✓		✓		K	
1.22	Turnstile, Ticketing		✓		✓		K	
1.23	Concrete pedestals to anchor and support electrical components	•	✓		✓		K	
1.24	Crane rental and operation	•	✓				K	
1.25	Traffic Control	•	✓	•			K	
1.26	Temporary Facilities and Utilities	•	✓				K	
2.0	Lower Terminal Tramway Equipment							
2.01	Design, Supply and Installation of all tramway electro-mechanical equipment including:	✓					D	
2.02	Rope saddle support structures	✓			•		D	
2.03	Rope saddles	✓					D	
2.04	Drive Machinery on base frames	✓			•		D	
2.05	Cabin guides	✓			•		D	
2.06	Automatic doors/railings along load/unload faces	✓			•		D	Coordinate design with AGPS - AGPS to establish design intent/aesthetics

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2.07	Machine guards around tramway equipment	✓					D	
2.08	Service catwalks and railings for rope saddles	✓					D	
2.09	Electrical Tramway Equipment	✓					D	
2.10	Excess track rope reels	✓					D	
2.11	Provide embeds and anchor bolts for all tramway electro-mechanical equipment and rigging points	✓	●		●		D	
2.12	Installation of embeds and anchor bolts for all tramway electro-mechanical equipment and rigging points	●	✓		✓		K	Doppelmayr to supply embeds
2.13	Review of tramway electro-mechanical drawings for compatibility with lower terminal structures	✓		●	✓		D, A	
2.14	Supply and installation of diesel engine exhaust systems from engine to outdoors (silencers delivered by Doppelmayr)	●	✓		✓		K	Doppelmayr supplies silencer, determines appropriate standard
2.15	Diesel fuel day tanks	✓					D	define size
2.16	Walkways, stairs, handrails and walkways/ladders for rope saddle access	●	✓		✓		K	See 7.215
2.17	Splash guards on ropes and sheaves in terminals	✓					D	
2.18	Final alignment of tramway mechanical/structural equipment	✓					D	
2.19	Haul rope protection in public area/track rope		✓		✓		K	
2.20	All the required grouting for tramway machinery components and terminal steel	✓					D	
2.21	Block-outs	✓	✓		✓		D, K	Doppelmayr and AGPS to design/incorporate in both document sets
2.22	Crane rental and operation	●	✓				K	
2.23	Traffic Control	●	✓	●			K	
2.24	Temporary Facilities and Utilities	●	✓				K	
3.0	Tower							
3.01	Geological & geotechnical reports and investigation				✓		A	
3.02	Define interface requirements for tower tramway mechanical/structural equipment (loads and geometry)	✓			✓		D, A	
3.03	Design and Engineering of Tower Foundations and Structures (loads on tower saddle level provided by DMCTEC)	●	✓		✓		K	Thermal/seismic Analysis
3.04	Installation of Tower Foundations and Structures including all materials/fabrication		✓		✓		K	
3.05	Rock anchors if required		✓		✓		K	
3.06	Ladder to access rope support saddles including any required railings and fall protection devices	●	✓		✓		K	
3.07	Aircraft anti-collision lights (if required)		✓		✓		K	City to determine
3.08	Design and supply tower top assembly including rope saddles, saddle supports and rope lifting frames. (Connecting bolts to tower structure imperial size)	✓			●		D	
3.09	Install tower top assembly	✓	●				D	
3.10	Conduit and wire for power to top of tower		✓		✓		K	110 provided
3.11	Conduit for DMCTEC safety circuit from lower terminal to top of tower		✓		✓		K	in addition to electric conduit on same run
3.12	As-built survey of tower structure		✓				K	
3.13	Catwalks and railings for rope saddles	✓					D	
3.14	Final alignment of rope saddles	✓					D	
3.15	Crane rental and operation	●	✓				K	
3.16	Traffic Control	●	✓	●			K	
3.17	Temporary Facilities and Utilities	●	✓				K	
4.0	Upper Terminal Building and Structure							
4.01	Geological & geotechnical reports and investigation				✓		A	Location of water line?

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4.02	Define interface requirements for upper terminal tramway electro-mechanical equipment (loads and geometry)	✓			✓		D,A	
4.03	Design and Engineering of Upper Terminal Building, Foundations and Structures	●			✓	●	A	
4.04	Installation of Upper Terminal Building, Foundations and Structures including all materials		✓		✓	●	K	
4.05	As-built survey of upper terminal including all tramway interface points		✓		✓		K	
4.06	Rock anchors if required		✓		✓		K	
4.07	Heating of rooms with electronic components (>32°F)		✓		✓		K	
4.08	Electrical house installation like, lights, electrical power outlets etc.		✓		✓		K	
4.09	Lightning protection of terminal buildings		✓		✓		K	
4.10	Sprinkler system, fire alarm system		✓		✓	●	K	
4.11	Water and sanitary installations		✓		✓	●	K	
4.12	Any required conduits and trench and covers for electrical and hydraulic runs in terminals	●	✓		✓		K	
4.13	Hooks, rails and anchoring points for maintenance and removing of tramway components		✓		✓		K	
4.14	All exterior and interior remodeling, employee locker area etc.		✓		✓		K	
4.15	Public address systems, loud-speakers		✓		✓		K	
4.16	Ticketing		✓		✓		K	
4.17	Concrete pedestals to anchor and support electrical components	●	✓		✓		K	
4.18	Service opening to counterweight enclosure	●	✓		✓		K	
4.19	Crane rental and operations	●	✓				K	
4.20	Traffic Control	●	✓	●		●	K	
4.21	Temporary Facilities and Utilities	●	✓			●	K	
5.0	Upper Terminal Tramway Equipment							
5.01	Design, Supply and Installation of all tramway electro-mechanical equipment including:	✓					D	
5.02	Rope saddle support structures	✓					D	
5.03	Rope saddles	✓					D	
5.04	Cabin guides	✓					D	
5.05	Railings and gates around cabin bay	✓					D	See 7.215 coordinate with AGPS
5.06	Machine guards around tramway equipment	✓					D	
5.07	Ladders, walkways and railings for rope saddles and counter-weight	✓					D	
5.08	Electrical Tramway Equipment	✓					D	
5.09	Provide attachment bolts for all tramway electro-mechanical equipment	✓					D	
5.10	Provide and install knife-plate connections for tension struts to terminal structure	●	✓		✓		K	
5.11	Review of tramway electro-mechanical drawings for compatibility with Upper terminal structures	✓		✓	✓		D	
5.12	Walkways, stairs, handrails, apart from the cabin bays and walkways/ladders for rope saddle access		✓		✓		K	See 7.215 coordinate with AGPS
5.13	Splash guards on ropes and sheaves in terminals	✓					D	
5.14	Final alignment of tramway mechanical/structural equipment	✓					D	
5.15	All the required grouting for tramway machinery components and terminal steel	✓					D	
5.16	Rigging Points		✓		✓		K	
5.17	Crane rental and operations	●	✓				K	
5.18	Traffic Control	●	✓	●		●	K	
5.19	Temporary Facilities and Utilities	●	✓			●	K	

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6.0	Rope Pull							
6.01	Procure and provide wire ropes to job site	✓				D		
6.02	Provide all required labor and materials for pulling of wire ropes	✓				D		
6.03	Provide specialized equipment, rigging and labor for pulling ropes across Interstate 5	✓				D		
6.04	Protection and temporarily deactivation of overhead power lines crossing the tramway centerline on Corbett st and Barbur blvd. Remove all other crossing power lines	●	✓			C	Utilities. Scope/Schedule (GH)	
6.05	Supply install and de-install all necessary protection scaffolding including foundation, tension blocks and crane hours	✓				D		
6.06	Traffic control (barricades, signs, flagmen, etc.) during the rope pulling operations and any other operation requiring disruption of traffic flow on public streets	✓	●			D		
6.07	Define procedures for rope pulling operations	✓				D		
6.08	Coordination with Owner's representative	✓	●			D		
6.09	Coordination with all authorities (fire, police, ambulance, transportation department, etc.	✓	✓			D,C	Dopp. Provide info, PDOT to communicate	
6.10	Final tension and securing of track ropes	✓				D		
6.11	Final tension and splicing of haul ropes	✓				D		
6.12	Rigging Points	✓	✓		✓	D, K	Dopp supply Material/ AGPS design/Kiewit Construction	
6.13	Permits for Crossing I-5, Barbur, Terwilliger	●	✓			C		
6.14	Temporary utilities and services outside of terminals and tower	✓	●			D		
7.0	Electrical							
7.01	Provide electrical power to tramway power distribution panel in upper and lower terminal (including terminations)		✓		✓	●	K Key milestone - must be complete prior to rope pull	
7.02	Harmonic filters (may be not required for proposed AC drive)	✓				D	IEEE Harmonic STDS	
7.03	Emergency generator at lower terminal for house installations like lights, heat, etc.		✓			●	C Connections to Block 25	
7.04	Emergency generator at lower terminal for tramway auxiliary power	✓				D		
7.05	Emergency generator at upper terminal for lights, heat, and tramway controls (battery charger) etc.		✓		✓	●	K Connections to PCF	
7.06	Aviation anti-collision lights on tower (if required)		✓		✓	K		
7.07	Provide grounding conductors in terminals		✓		✓	K		
7.08	Provide grounding conductors in tower		✓		✓	K		
7.09	Lights, heat, air-conditioning and service outlets in terminals		✓		✓	K		
7.10	Supply, installation and termination of all wiring from tramway distribution panel to all tramway components	✓				D		
7.11	Connecting steel structures and track ropes to grounding conductors in terminals	✓				D		
7.12	Electrical wires and installation material for tramway	✓				D		
7.13	Cabinets for tramway electrical components	✓				D		
7.14	UL Certification of tramway electrical controls (if required)	✓	●			D		
7.15	All required batteries for the tramway	✓				D		
7.16	Tram internal telephone system between upper and lower terminal and carriers	✓				D		
7.17	Public telephone system in lower terminal (with min. one analog line) Public telephone at upper terminal voluntary		✓		✓	●	K	
8.0	Project Support / Miscellaneous							
8.01	All required surveys	✓	✓		✓	DKA	Dopp to survey own equip based on ropeway survey	

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8.02	Transportation, freight, insurance, duty and brokerage fees for all tramway equipment and tools	✓					D	
8.03	Radio communication for construction and erection	✓					D	
8.04	Supply of test loads			✓				
8.05	Any and all fees for commissioning by the authority			✓				
8.06	Sales or special use taxes on tramway equipment			✓				VFR to check
8.07	Liability Insurance (Property and Personal Injury) to cover all site activities	✓					D	
8.08	Construction and building permits	✓		✓			D	Compliance/Assistance/Applicant City \$
8.09	Communication with authorities	●		✓			C	Dopp. Provide info, PDOT to communicate
8.10	Fees for bonds, guarantees etc (as required)	✓					D	
8.11	Right of ways and easements			✓				
8.12	Certification and PE approval of tramway equipment drawings and calculations	✓					D	
8.13	As-built drawings of tramway electro-mechanical equipment	✓					D	
8.14	Coordination of all prime contractors	✓	✓		●		D	AGPS to assist upon Owner's request
8.15	Coordination of own subcontractors and suppliers	✓	✓		●		D	AGPS to assist upon Owner's request
8.16	Provide site manager to coordinate all site activities	✓	✓		●		D	AGPS to assist upon Owner's request
8.17	Provide project manager to coordinate all project activities	✓	✓		●		D	AGPS to assist upon Owner's request
8.18	Attend project site coordination meets (weekly)	✓	✓		●		D	AGPS to assist upon Owner's request
8.19	Provide power (temporary and final) for construction, start-up and commissioning		✓	✓			K	
8.20	Provide temporary sanitary facilities for construction		✓				K	
8.21	Provide site for project trailer including availability of power and phone hookups		✓	✓			K	
8.22	Snow clearing of roads and terminal sites			✓			C	
8.23	Touch up painting of tramway equipment after start-up	✓					D	
8.24	Provide job-site trailer		✓	✓			K	
8.25	Provide secure lay-down area for receiving and staging of tramway equipment (approx. 38,000 square feet)		✓	✓			K	
8.26	All approvals	✓					D	
8.27	Workers Compensation Insurance for own employees	✓	✓				D, K	
8.28	Employer's liability insurance for own employees	✓	✓				D, K	
8.29	Automobile liability for owned and rented vehicles	✓	✓				D, K	
8.30	General liability insurance covering completed operations (after installation)	✓	✓				D, K	
8.31	Builders risk insurance covering contract work	✓	✓				D, K	
8.32	Provide insurance or verify existence of insurance for all other contractors at the job site			✓			C	Doppelmayr, Kiewit verify subs
8.33	Job site security	●	✓	✓			K	2 stations/tower
8.34	Traffic control (barricades, signs, flagmen, etc.) during any operation requiring disruption of traffic flow on public/OHSU streets	✓	✓	●		●	D, K	Dopp - rope pull Kiewit - erection
8.35	Crane hours as indicated to general contractor	●	✓	✓			K	Doppelmayr to coordinate scheduling of crane time
8.36	Temporary storage of tramway equipment in dry, secure location	●		✓			C	Use Maintenance Yard
8.37	Utility Relocations as described in Agreements - Provide clear building sites and relocate utilities along Gibbs Street per Rope Pulling Plan	●	●	✓	●	●	C	Key Milestone for construction of structures and Rope Pull
9.0	Operation and Maintenance							
9.01	Radio communication	●		✓			C	Doppelmayr assist in defining and acquiring
9.02	Rope shortening after commissioning	●		✓			C	Doppelmayr assist in defining and acquiring
9.03	Initial lubrication and oil filling of gearboxes and hydraulics	✓					D	

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9.04	Lubricants and oil after commissioning	●		✓			C	Doppelmayr assist in defining and acquiring
9.05	Spare part package for electro-mechanical equipment	✓					D	Define as deliverable
9.06	Tools especially designed for maintenance	✓					D	Including rigging platforms
9.07	Standard hand tools	●		✓			C	Doppelmayr assist in defining and acquiring
9.08	Rigging equipment for maintenance	●		✓			C	Doppelmayr assist in defining and acquiring
9.09	Workshop equipped and furnished	●		✓			C	Doppelmayr assist in defining and acquiring
9.10	All equipment for ticketing, bookkeeping, administration etc.			✓			C	
9.11	Provide operating and maintenance staff during final adjustment and start up procedure	●		✓			C	Doppelmayr assist in defining and acquiring
9.12	Instruction of operating and maintenance personnel during erection, start-up and commissioning	✓					D	
9.13	Initial training of qualified maintenance staff	✓					D	
9.14	Operating insurance			✓			C	

RFP NO. IO2403B

CONTRACT NO. 35951

**FOR
PORTLAND AERIAL TRAM**

This Contract, made and entered into this 8th day of ~~May~~ ^{June}, 2005, by and between **Kiewit Pacific Co.**, 2200 Columbia House Blvd., Vancouver, Washington 98661, hereinafter called the "**Contractor**," and the **City of Portland**, 1120 S.W. 5th Avenue, Suite 800, Portland, Oregon 97204-1914, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called the "**City**."

RECITALS:

1. The City intends to construct the Portland Aerial Tramway Project, hereinafter called the "Project," using the efforts of both the Contractor and Doppelmayr CTEC.
2. The drawings, plans, specifications and general conditions for all the Work to be performed by the Contractor are being prepared by agps architecture, hereinafter called the "Architect."
3. At the time of the execution of this agreement, the plans and specifications for the work to be performed by the Contractor have not been completed. Therefore, the current Cost of the Work is only an estimate, and the final Cost of the Work cannot be determined until the plans and specifications are complete.

AGREEMENT

Therefore, in light of these facts and in consideration of the mutual covenants and other considerations contained herein, the parties hereto agree as follows:

1. Description of Work.

The Contractor agrees to provide all the machinery, tools, apparatus, materials, equipment, labor and other means of construction reasonably inferable from plans and specifications as necessary to perform and complete the work in the manner specified and in accordance with the requirements of the completed Contract Documents.

- a. When completed, the plans and specifications will mean that the Contractor's obligations under this Agreement consist of construction of the following elements:

Tramway Upper Station
Tramway Main Tower
Tramway Lower Station
- b. The Work stated above shall be performed pursuant to completed plans and specifications that will be set forth in Exhibits B, C and E. At present, Exhibit C reflects an incomplete state of design. The parties agree that when the design is complete, the current Exhibit C documents will be superseded by the 100% Construction Documents.
- c. The scope of Work of this contract does not include the design, procurement, transportation, installation and testing of the "Tramway System" being provided by Doppelmayr CTEC ("Doppelmayr") pursuant to a separate contract with the City.
- d. Exhibit J to this Contract outlines work that will be performed by the Contractor and work that will be performed by Doppelmayr. Exhibit J also includes, for information only, the relative financial responsibility for various entities that are involved in the project. However, Exhibit J does not limit any of the party's rights to this Contract.
- e. Contractor will support the City's efforts in coordination for planning, installation and testing of the Tramway System but is not responsible for Doppelmayr's performance or the system's overall performance or operation.

2. Contract Documents.

The drawings, plans and specifications, together with this Agreement, and the following attached exhibits, shall constitute the Contract Documents:

- a) Exhibit A, "Schedule of Values Estimate" dated April 15, 2005
- b) Exhibit B, "Portland Aerial Tram, 100% Design Development Specifications, Project Manual: Volume 1 & 2" dated June 18, 2004
- c) Exhibit C, "Portland Aerial Tram, Construction Documents, 50% CD's" dated October 15, 2004. The parties are attaching this document for

reference only at this time. When Exhibit C is completed it will automatically be substituted for the current Exhibit.

- d) Exhibit D, "Milestones and Project Schedule", Data date April 8, 2005; Run date April 21, 2005.
- e) Exhibit E, "Amendments to Standard Specifications" (General Conditions of the Contract for Construction Division 1 (A), dated January 2002, Revised: July 2004), and "Standard Specifications" (General Conditions of the Contract for Construction Division 1 (A), dated January 2002, Revised: July 2004)
- f) Exhibit F, "M/W/ESB Subcontracting Plan and Matrix"
- g) Exhibit G, "Workforce Training and Hiring Plan"
- h) Exhibit H, " Prevailing Wage Rates"
- i) Exhibit I, "Upper Station Restrictions"
- j) Exhibit J, "Doppelmayr CTEC Interface Matrix"
- k) Exhibit K, "Bonds and Additional Provisions"

The Contractor acknowledges that this will be a fast-track Project in which construction will be commenced on one or more components prior to completion of all Construction Documents for the Project. Currently applicable milestone dates of design, construction and completion for the Project are set out in Exhibit D. The Contractor will develop a baseline Project Schedule in accordance with the major milestones and keep it current throughout construction.

The City and Contractor agree to make all records, calculations, drawings, pricing information and other documentation available to each other on an ongoing basis and in a timely manner as necessary to facilitate the execution of the work under this contract.

3. Order of Precedence.

Division 1A specifications, section 104.02, as amended, shall govern order of precedence in the event of conflict in the documents.

4. Subcontracts.

The Contractor shall solicit and receive bids and shall award and administer subcontracts for the performance of all work not performed by the Contractor's forces. The Contractor shall submit a subcontracting plan to the City for review and comments. The Contractor and City shall mutually agree on all subcontracts awarded for the Project. The Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

5. Commencement and Completion of Work.

The Contractor shall commence work as soon as practical after receipt of **Notice to Proceed** and shall substantially complete all work and turn the Project over to the City ready for occupancy on **September 30, 2006**, except as this date may be extended pursuant to the terms of the contract documents. If the Contractor is delayed at any time in the progress of the work by any suspension or any act or neglect of City or any of its employees, agents or other representatives, then Contractor shall be allowed an equitable adjustment for any additional costs or time incurred by reason of such delay.

6. Guaranteed Maximum Price.

- a. The parties have established a Guaranteed Maximum Price (GMP) for the Work in the amount of \$19,762,835. Included within that overall amount is an estimated Contract Amount to be paid to the Contractor of \$17,815,950, and the Owner's Risk/Contingency Allowance of \$1,946,885.
- b. The estimated Contract Amount of \$17,815,950 includes the estimated construction costs shown on the Schedule of Values and a Contractor's Fee of \$1,038,736, among other items.
 - i. The estimated cost of construction is likely to change because plans and specifications are not complete. After subcontractor bids are received and approved, the Contract Amount will be adjusted by Change Order.

- ii. The Contractor's Fee of \$1,038,736 will not change, other than as specifically provided for in Section 12, as a result of the completion of the plans and drawings or as a result of the receipt of subcontractor bids.
- c. The City's Risk/Contingency Allowance ("R/C Allowance") is not anticipated to change. The purpose of the City's Risk/Contingency Allowance is to have a sum of money, under the sole control of the Owner, to cover additional costs that may occur on the Project. For example, if the estimated Contract Amount increases once the plans and specifications are complete and subcontractor bids are received and approved, then the increased Contract Amount will be paid for by Owner out of the City's R/C Allowance.
- d. The Contractor's Fee of \$1,038,736 shall be the Contractor's sole compensation for profit and certain costs, including:
 - i. Profit
 - ii. Indirect and home office costs, including general and administrative expense, overhead, and nondirect salaries other than the Field Office Costs.
 - iii. Salary of any person employed, during the execution of the work, in the home office or in any regularly established branch office. Cost of employees engaged at shops or on the road and in expediting the production or transportation of materials or equipment together with an agreed upon percentage for fringe benefits.
 - iv. Cost of capital employed either in the plant or in expenditures of the work.
 - v. Subsistence and travel costs for the Contractor's employees.
 - vi. Personal Property Taxes on the Contractor's equipment and construction materials
 - vii. Field office supplies and services including office supplies, blueprints, messenger services, fax machines, computers, two way radios, telephone, postage, reproduction, photographs.

7. Establishment of Subcontracts.

Upon completion of design drawings and specifications, the Contractor shall prepare bid packages, and solicit and receive bids from subcontractors. All trade work under this contract, other than work performed directly by the Contractor and as mutually agreed to by the City and Contractor or as provided for by Exhibit F. "M/W/ESB Subcontracting Plan", shall be competitively bid. Subcontractor selection shall be based upon "Best Value" to the City, inclusive of bid price and other factors deemed significant by the City.

and the Contractor. The City and Contractor shall establish criteria for each selection and shall establish an evaluation committee to make each subcontractor selection. The Contractor, including affiliates or subsidiaries of the Contractor are not excluded from bidding on any component or package for this Project. Prices of subcontractor bids shall not be "marked up" by the CMGC for additional overhead or profit or fee. The evaluation may also include a risk assessment and recommendations from the Contractor on a contingency amount to be considered for each subcontractor bidding a scope of work.

8. Collaboration on GMP and Schedule.

The parties agree to work together to complete all work within the GMP amount to the maximum extent possible for the agreed upon scope of work. The Contractor will also perform a schedule analysis with the subcontractors bid. If the time assigned for the same scope of work within the current Project Schedule (see Exhibit D) differs from the timeline provided in the selected subcontractors bid, the Contractor and City shall collaborate to develop a plan to meet the Project Schedule's major milestones or agree to warranted adjustments in the Project schedule.

9. General Conditions Allowance.

Within the GMP, an estimate has been made for the Contractor's cost for "General Conditions" based upon current scope and understanding of the work. The parties shall agree upon those General Conditions items that are reasonable and necessary in order to perform the work. Only those General Conditions expenses authorized and approved by the City will be reimbursable under this Contract. The Contractor shall continuously track the costs for these items and keep the City fully informed at all times. As a minimum, General Conditions' expenditures will be reviewed on a monthly basis between the Contractor and the City.

The parties agree to the maximum extent possible to manage General Conditions expenses so that this allowance is not exceeded. In the event that the City authorizes and approves General Conditions expenditures in excess of the current allowance, the City may use the Risk/Contingency allowance to pay for the increased costs.

10. Risk/Contingency Allowance.

As noted above, there is the Risk/Contingency Allowance within the GMP. If the City is required to spend money from the Risk/Contingency Allowance, it shall be adjusted accordingly. The Contractor shall continuously track this Allowance including all adjustments thereto and keep the City fully informed at all times as to the amount contained within it. At a minimum, Risk/Contingency adjustments will be reviewed on a monthly basis between the Contractor and the City. The parties agree to the maximum

extent possible to manage all work so that the Risk/Contingency allowance and the overall GMP are not exceeded.

11. Adjustment to CM/GC Fee.

- a. The Contractor Fee is \$1,038,736.00. If the Work under this contract is completed within plus or minus 10% of the currently established GMP amount of \$19,762,835, the Fee will not be adjusted.
- b. If payments under this contract exceed the GMP of \$19,762,835 by more than 10% (the sum of \$21,709,118.50), the Contractor shall be entitled to an additional Fee amount calculated at 4% of the difference between \$21,709,118.50 and the higher amount.
- c. If payments under this contract be less than \$19,732,835 by more than 10%, (the sum of \$17,759,551.50) the City shall be entitled to a contract credit amount calculated at 4% of the difference between \$17,759,551.50 and the lower amount.

12. Adjustments to the GMP.

At project completion, if the City has not spent the full amount of the GMP, then the City is entitled to all sums remaining below the GMP. Should the GMP be greater than \$19,762,835 as a result of approved change orders, either at project completion or during construction, then the Contractor shall be entitled to additional payment as has been authorized.

13. Payment.

The City shall pay the Contractor in current funds for the Contractor's performance of the Work, in accordance with the final Schedule of Values.

14. Reduction of Costs.

The Contractor recognizes the relationship of trust and confidence established between it and the City by this Agreement and it agrees to furnish its best skill and judgment and to cooperate with the Architect in forwarding the interests of the City. Contractor agrees to furnish efficient business administration and superintendent, and to use every reasonable effort to minimize expense to the City, to keep upon the work at all times an adequate supply of qualified workers, machinery and materials and to promote the progress of the work in the most expeditious and economical manner consistent with the interests of the City. The Contractor shall employ and direct all persons performing any work covered by this Agreement. It is the intention of this agreement that the Contractor shall be and remain an independent Contractor and nothing herein is

intended to be construed as inconsistent with that status. The Contractor shall control the manner and method by which the work shall be performed and shall inform all persons employed by it and any subcontractor that they are employed by and work for the Contractor or subcontractor and not the City.

15. Accounting System.

The Contractor shall keep accurate and detailed books of account open to the inspection of the City. Contractor shall keep such full and detailed accounts and job costs as may be necessary for proper financial management by the Contractor under this Agreement. Contractor shall at all time act in good faith and to the best advantage of the City in the purchase of materials in the employment of labor and in all its conduct and activities relative thereto.

- a. The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the one (1) year period upon completion of the Project. 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.
- b. If an audit discloses that payment to the Contractor were in excess of the amount to which Contractor was entitled, then the Contractor shall repay the amount of the excess to the City.
- c. If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, the City may pursue remedies as provided in Exhibit E to this Agreement.

16. Consequential Damages.

In no event shall Contractor be liable to City for consequential damages, except to the extent that such damages may be covered by insurance proceeds and then the Contractor is liable only to the extent that such proceeds exist. Consequential damages include but are not limited to, loss of use of the Tram, lost profits or interest on borrowed funds, whether such damages arise in contract, in tort (including the negligence of Contractor), or as a result of the application of the principle of strict liability or otherwise.

17. Liquidated Damages.

The Contractor acknowledges and agrees that time is of the essence. The parties agree that if the Work for an Element is not released to Doppelmayr-CTEC by the agreed

dates of substantial completion as well as the final completion date of the Project, as adjusted by Change Orders, the amount of the City's actual damages will be difficult or impractical to determine. Accordingly, the parties agree that if the Work for an element, as well as the final completion date of the Project, is not substantially complete by the agreed date(s) of substantial completion, as adjusted by Change Orders, the Contractor shall pay to the City as liquidated damages in accordance with the following schedule for each and every day after the agreed date of substantial completion of the Work, as adjusted by Change Orders, that each element is not substantially complete:

One to Thirty Days Late	\$2,000 per day
More than Thirty Days Late	\$3,500 per day

The parties further acknowledge and agree that the Contractor's obligation to pay liquidated damages under this section shall be in lieu of any obligation to pay actual damages for delay, that the daily sums in liquidated damages to be paid as set out above are reasonable under the circumstances existing as of the date of this Contract, that the payment of such liquidated damages is not intended to be a penalty or forfeiture, and that the maximum liquidated damages will be three thousand and five hundred dollars (\$3,500.00) per day aggregate and a total amount not to exceed twenty-five percent (25%) of the Contractor's Fee for constructing the Project.

18. Miscellaneous.

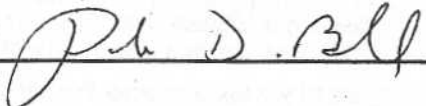
- a. The Contractor hereby agrees to furnish fully executed Performance and Payment Bonds, both in the full contract value. The cost will be a reimbursable cost of the Project, and such bonds shall be delivered to the City.
- b. Title to all work completed and in the course of construction and to all materials and supplies on account of which any payment has been made shall be in the City.
- c. The Contractor hereby agrees that no city officer or employee of the City is or shall be entitled to any share, part or benefit(s) derived from this Contract.
- d. Pursuant to Section 13, the Contractor hereby agrees to pay all royalties and license fees for all patented articles or processes and save City free from all loss or damage that may result from the wrongful or unauthorized use of said items except for those articles specifically provided by the City.

19. Designer.

The City has acquired the Project Design from other parties. To the extent permitted by the Oregon Constitution and within the limits of the Oregon Tort Claims Act, ORS 30.260 et. Seq., the City shall defend, indemnify and hold harmless the Contractor from claims due to design errors, negligence, or acts of omissions related to the Project Design and design assumptions. The City or the Designer will be the Engineer of Record, and all responsibilities customarily assigned to the Engineer of Record shall remain the responsibility of the City, Design Engineer, or Design Architect. The Contractor, in working closely with the City, Design Engineer, and/or Design Architect shall assume no design responsibility or liability whatsoever, expressed or implied.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, through their authorized officers, effective the date first above written.

(Affix Corporate Seal)

^{PB}
Kiewit Pacific Company Co.
By 
Parke D. Ball, Vice President
(Print Name and Title)

Approved as to Form:

Address: 2200 Columbia House Blvd.
Vancouver, WA 98668-1769

City Attorney

Telephone: (360) 693-1478
Fax: (360) 693-5582

STATE OF OREGON
CONTRACTORS BOARD NUMBER

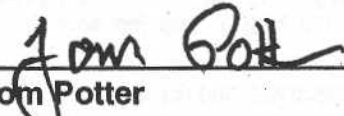
63471

CITY OF PORTLAND

CITY OF PORTLAND
BUSINESS LICENSE NUMBER

364174

By 
Auditor Gary Blackmer

By 
Mayor Tom Potter

Center Code: 15942123/37385 Initial: MB Date Typed: May 24, 2005

Funding: LID/PDC/PRIVATE

APPENDIX A

Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapter 279 requires every public contract to contain certain provisions. Pursuant to ORS Chapter 279, the following provisions shall be a part of this contract, as applicable:

- Pursuant to ORS 279C.505, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- Pursuant to ORS 279C.510 (1) (2), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. In every public contract for lawn and landscape maintenance the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279C.515, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.520. (3), the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.200 (3), an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (9) (a) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- Pursuant to ORS 279C.530, in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, all employers working under the contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279.530 (2), as amended effective 5/25/01, "Every public contract also shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126."
- Pursuant to ORS 279C.830 (2), a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279.375(1). The fee shall be paid to the Commissioner pursuant to the administrative rule of the Commissioner.
- Pursuant to ORS 279C.580 (a), in each contract awarded by a public contracting agency, the contractor shall include in each subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (b), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515 (2).

The contractor shall include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

Pursuant to ORS 279C.505 (2) (1), Contractor shall demonstrate that an employee drug-testing program is in place.

Revised March 9, 2005

ORDINANCE No.

179 223

As Amended

***Authorize contract with Kiewit Pacific Company to construct the Portland Aerial Tram project.
(Ordinance)**

The City of Portland ordains:

1. On August 13, 2003, City Council approved Ordinance No. 177795, which exempted the Portland Aerial Tram project from the competitive low bid process and permitted the City to procure Tram Equipment from a tram equipment supplier and select a Construction Manager/General Contractor to construct the proposed Tram by means of a competitive Request for Proposal (RFP) process.
2. After the passage of Ordinance No. 177795, the Bureau of Purchases and the Portland Office of Transportation (PDOT) developed a Request for Proposal (RFP) for the selection of a Construction Manager/General Contractor (CM/GC). The RFP was advertised on May 10, 2004, and responsive proposals were received from Kiewit Pacific Co., Hoffman-Andersen, and Stacy and Witbeck, Inc.
3. Proposals for the project were evaluated based on experience, qualifications, and other factors. An evaluation committee appointed by the Commissioner-in-Charge of PDOT evaluated the proposals and interviewed the respondents, and recommended that Kiewit Pacific Co. be retained as the CM/GC for the Portland Aerial Tram project.
4. Based on the selection committee's recommendation, City Council endorsed the selection of Kiewit Pacific Co. as the CM/GC for the Portland Aerial Tram project. On October 6, 2004, City Council approved Ordinance No. 178798 selecting Kiewit Pacific Co. as CM/GC and authorizing a contract for preconstruction services with Kiewit Pacific Co.
5. On March 9, 2005, City Council approved Ordinance No. 179095, reauthorizing the competitive bidding exemption for the Portland Aerial Tram in accordance with State of Oregon procurement statutes.
6. The City and Kiewit Pacific Co. have negotiated acceptable construction contract conditions and a construction cost proposal of \$17,815,950 for Kiewit Pacific Co. to provide all machinery, tools, apparatus, materials, equipment, labor and other means of construction necessary to perform and complete the work in the manner specified and in accordance with the requirements of the Contract Documents.
7. Funds for the contract with Kiewit Pacific Co. have been identified and approved as part of the South Waterfront Central District Project Development Agreement, as amended, and through the formation of the Portland Aerial Tram Local Improvement District. City



CITY OF
PORTLAND
 OFFICE OF
TRANSPORTATION

F

Mayor Tom Potter
 1120 S.W. 5th Avenue, Suite 800
 Portland, Oregon 97204-1914
 503-823-5185
 FAX 503-823-7576 or 823-7371
 TDD 503-823-6868

Brant Williams
 Director

Eileen Argentina
 System Management

Bryant Engle
 Finance

Don Gardner
 Engineering & Development

Sam M. Irving, Jr.
 Maintenance

Laurel Wentworth
 Planning

DATE: April 7, 2005
 TO: Mayor Tom Potter.
 FROM: Matt Brown, Project Manager, Project Management Division
 RE: *Authorize contract with Kiewit Pacific Company to construct the Portland Aerial Tram project.
 (Ordinance) **EMERGENCY ORDINANCE**

1. INTENDED THURSDAY FILING DATE: April 7, 2005
2. REQUESTED COUNCIL AGENDA DATE: April 28, 2005, 2:00 Time Certain
3. CONTACT NAME & NUMBER: Matt Brown, Project Manager, 823-7027
4. PLACE ON: CONSENT REGULAR
5. BUDGET IMPACT STATEMENT ATTACHED: X Y N N/A
6. (3) ORIGINAL COPIES OF CONTRACTS APPROVED AS TO FORM BY CITY ATTORNEY ATTACHED: Yes No N/A **DRAFT ATTACHED**

7. BACKGROUND/ANALYSIS

The Portland Aerial Tram project was initiated by City Council in 2002 as part of the Marquam Hill Plan process. At that time, City Council asked PDOT to undertake a process for identifying alternatives for connecting the Marquam Hill Campus of OHSU with South Waterfront, and return with a recommendation for Council consideration. PDOT developed a five step process for considering a "suspended cable transportation system" (SCTS) and presented that process to the Planning and Design Commissions for review and feedback prior to submitting the process to City Council for approval.

The process that PDOT developed included five primary steps:

1. Process Development
2. Alternatives Analysis
3. Policy Evaluation and Development
4. Design Development
5. Engineering and Construction

The process was set up under the City Engineer's authority to consider and approve public transportation improvements in the public right-of-way. Each step of the process requires meaningful public involvement and City Council action prior to moving on with the next step.

The Process Development portion of the project was completed when City Council approved Resolution #36071 on May 23, 2002, which accepted the City Engineer's recommendation for the consideration of a SCTS and directed the City Engineer to undertake an alternatives analysis for connecting Marquam Hill to South Waterfront. Upon receiving direction from City Council, the City Engineer proceeded with the Alternatives Analysis, studying ten unique connection alternatives including shuttle bus systems, aerial gondolas, and aerial trams. Concurrently, the Bureau of Planning developed policy recommendations within the Marquam Hill Plan process to support the City Engineer's final recommendation to pursue an aerial tram on the SW Gibbs Street alignment. Both the Alternatives Analysis and the Policy Evaluation and Development portions of the process were completed and approved by City Council on July 10, 2002.

Following the completion of the Alternatives Analysis and Policy Evaluation and Development, City Council directed the City Engineer to undertake the Design Development phase of the project and to work with Portland Aerial Transportation, Inc. (PATI), a non-profit board dedicated to pursuing the aerial tram project, on an international design competition for the project. PATI and PDOT successfully managed the design competition, involving over 1500 Portland residents in the process. The selected firm, agps architecture, was

Council authorized the formation of the Portland Aerial Tram Local Improvement District through Ordinance No. 178675 on August 18, 2004.

- 8. Funds are available in the Transportation Operating Fund, AU 159, Center Code 15942123, Account Code 563000, Project Number 37385.

NOW, THEREFORE, the Council directs:

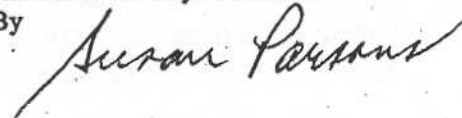
- a. The Mayor and City Auditor are hereby authorized to execute a Contract with Kiewit Pacific Co. for the purposes described in Section 1, in the amount of \$17,815,950, subject to approval by the City Attorney's office.
- b. The City's Project Manager is authorized to approve an increase in the contract amount for construction not to exceed \$1,946,885 that will be held in reserve as contingency for additional work due to changed conditions and/or additional work not contemplated in the Contract Documents.
- c. The Mayor and Auditor are hereby authorized to draw and deliver checks payable to Kiewit Pacific Co., chargeable to the Transportation Operating Fund, AU 159, Object Code 630.

Section 2. The Council declares that an emergency exists because delays in the construction of the Portland Aerial Tram Project will adversely affect development progress in South Waterfront and will force the City to miss contractual deadlines for project delivery; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, APR 28 2005

Mayor Tom Potter
Prepared by: Matt Brown:slg
April 7, 2005
Kiewit Ordinance 040605.doc

GARY BLACKMER
Auditor of the City of Portland
By



DEPUTY

retained to design the tram project and work with the PATI Board and the Portland Aerial Tram Citizens Advisory Committee (CAC) to develop a world-class design for the project.

The Design Development phase included an extensive public participation process. 18 CAC meetings were held to guide the design and identify neighborhood improvements. The CAC was guided by additional public events, Design Commission sessions and numerous public briefings with interested stakeholders that took place over a year and a half. The process culminated with the CAC unanimously forwarding a report to City Council on the project, and the City Council approving the City Engineer's and CAC's recommendations for the design of the project and neighborhood improvements on June 10, 2004. At that time, Council directed the City Engineer to undertake the final step of the project – Final Engineering and Construction – and return to Council for final approval of construction contracts required to undertake the project.

The Ordinance before City Council is for the construction of the Portland Aerial Tram project. Kiewit Pacific Co. was selected as the Construction Manager/General Contractor through a qualifications-based selection process (as opposed to a standard low-bid process). Kiewit's experience with complex structural projects will be indispensable in the delivery of this project. Over the past six months, Kiewit has worked with the design team and City staff to identify construction schedules, develop project cost estimates, and ensure the constructability of the current design proposal.

The structure of the Kiewit contract sets a \$20,000,000 authorization for construction, which includes approximately \$1,800,000 in contingency. Kiewit will work with City staff and the design team to assemble bid packages for market bidding. Many of these packages, especially those that are most critical to the project schedule or design, will be bid as "best value" selections, meaning that while cost will certainly be a major factor in the decision to award a subcontract, other issues like M/W/ESB participation, qualifications and experience, and risk assessment will be used to determine the best value bidder for the various packages. The end result of this contracting process is that the project will be market bid, ensuring that the City receives competitive prices on the open contracting market.

Current legal issues associated with the Portland Aerial Tram project include challenges to the validity of the Local Improvement District (LID) formed to finance the project by the Zidell family, and the probability of a lawsuit to be filed by Gibbs Street property owners concerning the ownership of air rights within the Gibbs Street right-of-way. The latter issue will likely be filed immediately after the passage of the Doppelmayer and Kiewit contracts, as these contracts are seen as the Council's final decision on the Portland Aerial Tram project.

The authority to construct the Portland Aerial Tram project is derived from the City Engineer's Charter and Code authority to determine the type and nature of improvements within the public right-of-way. Part of this process includes working with the Portland Design Commission to gather advice on the design of the project, as there are no current City standards for this type of project. To date, we have been before Design Commission on five different occasions to brief them on the project and solicit their advice on the design of the project.

Emergency Ordinance

Why is it necessary to circumvent the regular agenda process and timelines?

The Portland Aerial Tram project is identified as a contingent project in the South Waterfront Central District Project Development Agreement (DA). The DA commits the City to delivery of public projects, including the aerial tram, by certain dates. In the case of the tram, the project must be open by September 30, 2006, concurrent with the opening of OHSU's Building One adjacent to the lower terminus. The tram is critical to the success of South Waterfront development and OHSU's campus, and delays in opening would force the City to provide other temporary transportation (e.g., shuttle buses) to serve South Waterfront/Marquam Hill.

The schedule for the Portland Aerial Tram project is very tight. The cost issues encountered on the project last October forced the project to be placed on hold for four months as cost issues were researched and design alternatives identified that would lower project costs. When the project was restarted in mid-February, the schedule was reviewed and further developed to determine whether it was still possible to achieve the project opening date of September 30, 2006. While it is still possible to make a September 30, 2006 opening, the schedule is very aggressive and relies on the ability to place orders for long lead-time items (tram equipment, structural steel) in early May, 2005.

Why couldn't this item have been filed a month earlier preventing the need for the emergency clause?

The project team, upon receiving notice to restart the project in mid-February, had less than two months to finalize contract negotiations for the Tram Equipment Supply and Construction Manager/General Contractor contracts. Moving these items up 30 days would have been impossible, as the contracts are highly complex and required more than three weeks to assemble. In assembling the project schedule, the project team identified the fact that to meet the September 30, 2006 opening date, the Council actions would need to be in the form of emergency ordinances, as completing the contract negotiations 30 days earlier would not be possible and adding 30 days for a non-emergency ordinance to take effect would simply push the end date of the project out 30 days. In February, PDOT and Mayor's office staff met to identify the schedule for the project, including the need for an emergency ordinance to meet the proposed opening date for the project.

In addition, the increased project cost has necessitated an amendment to the South Waterfront Central District Project Development Agreement. This amendment was negotiated on as fast a timeline as possible, and filed for Portland Development Commission approval on April 13th, with a follow-up action on April 27th if necessary. The tram contracts could not be considered by City Council any earlier than April 27th, as funding commitments by OHSU to pick up the additional tram costs would not be in place prior to the 27th.

Why is it in the public's best interest to have the item filed as an emergency, precluding the opportunity for public review and input through the regular agenda process?

There has been extensive public review and input on the Portland Aerial Tram project, and there will continue to be in the future. The items before Council simply implement the direction given by Council previously – there are no “surprises” to the public. Over the last month, City staff have communicated directly with the Tram CAC, CTLH and Homestead Neighborhoods, Friends of Terwilliger, the Design Commission, North Macadam URAC, and Gibbs Street Residents on the status of the project and the actions before Council at this time. We will continue to work with these groups and others as the project moves further into the construction process.

The public is best served with an emergency ordinance for this project because it protects the City from taking on additional costs (in the form of temporary transportation and damage claims) should the September 30, 2006 opening date be delayed. Also, the sooner that the City can execute the construction contracts, the sooner that cost drivers on the project (steel materials costs, exchange rate fluctuations) can be mitigated by locking in costs and taking cost variability out of the most volatile project elements. Last, it is in the public's best interest to ensure that the Tram project does what it is supposed to do – provide a quick, reliable transportation link between South Waterfront and Marquam Hill. It is important that this link be available at the opening of the first OHSU building to encourage proper travel behavior from the beginning in South Waterfront.

8. FINANCIAL IMPACT

No Financial Impact/Budgeted Item.

9. RECOMMENDATION/ACTION REQUESTED

Pass Ordinance.

